

11-23-2009

# Estate of Dumoulin v. CUNA Mut. Group Clerk's Record v. 1 Dckt. 36828

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LAW CLERK

Vol. 1 of 2

IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO

THE ESTATE OF JUDY DUMOULIN, deceased,  
by and through her personal representative and  
JOSEPH DUMOULIN, an individual,

PLAINTIFF-APPELLANT,

**SEE AUGMENTATION RECORD**

CUNA Mutual Group, an Iowa corporation,  
authorized by the State of Idaho, Department of  
Insurance, to transact business in the State of Idaho,

DEFENDANT-RESPONDENT.

*Appealed from the District Court of the Fourth Judicial  
District of the State of Idaho, in and for ADA County*

*Hon CHERI C. COPSEY, District Judge*

THOMAS G. MAILE, IV

*Attorney for Appellant*

J. KEVIN WEST

*Attorney for Respondent*

**COPY**

FILED - COPY	
NOV 23 2000	
Supreme Court	Court of Appeals
Entered on ATS by: _____	

36828

IN THE SUPREME COURT OF THE STATE OF IDAHO

THE ESTATE OF JUDY DUMOULIN,  
deceased, by and through her personal  
representative and JOSEPH DUMOULIN,  
an individual,

Plaintiff-Appellant,

vs.

CUNA Mutual Group, an Iowa  
corporation, authorized by the State of  
Idaho, Department of Insurance, to transact  
business in the State of Idaho,

Defendant-Respondent.

Supreme Court Case No. 36828

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE CHERI C. COPSEY

THOMAS G. MAILE, IV

ATTORNEY FOR APPELLANT

BOISE, IDAHO

J. KEVIN WEST

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

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Date: 10/20/2009

Footh Judicial District Court - Ada County

User: CCTHIEBJ

Time: 12:44 PM

ROA Report

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Estate Of Judy Demoulin, etal. vs. CUNA Mutual Group

Estate Of Judy Demoulin, Joseph Dumoulin vs. CUNA Mutual Group

Date	Code	User	Judge
10/2/2008	NCOC	MCBIEHKJ	New Case Filed - Other Claims
	COMP	MCBIEHKJ	Complaint Filed
	SMFI	MCBIEHKJ	Summons Filed
10/31/2008	ANSW	CCRANDJD	Answer (West for Cuna Mutual Group)
11/4/2008	HRSC	TCWEATJB	Hearing Scheduled (Status by Phone 12/19/2008 08:30 AM)
11/6/2008	NOSV	CCBOYIDR	Notice Of Service
11/12/2008	STSC	CCDWONCP	Stipulation For Scheduling And Planning
11/20/2008	HRVC	TCWEATJB	Hearing result for Status by Phone held on 12/19/2008 08:30 AM: Hearing Vacated
12/1/2008	NCOM	CCMAXWSL	Notice Of Compliance
	NOTS	CCMAXWSL	Notice Of Service
12/8/2008	SCHE	TCWEATJB	Scheduling Order
	HRSC	TCWEATJB	Hearing Scheduled (Jury Trial 01/19/2010 09:00 AM) 3d
	HRSC	TCWEATJB	Hearing Scheduled (Pretrial Conference 12/17/2009 04:30 PM)
12/9/2008	NOTC	CCLYKEAL	Notice of Compliance
12/19/2008	MOTN	CCGARDAL	Motion to Disqualify Potential Alternate Judge
12/22/2008	ORDR	TCWEATJB	Order Granting Motion for Disqualification of Potential Alternate Judge
	NOTS	CCWRIGRM	Notice Of Service
1/28/2009	NOTD	CCBURGBL	Notice Of Taking Deposition
3/17/2009	NOTC	MCBIEHKJ	Notice of Compliance
	CERT	MCBIEHKJ	Certification to Court of Expert Witnesses
4/20/2009	MOTN	CCNELSRF	Motion for Summary Judgment
	AFSM	CCNELSRF	Affidavit In Support Of Motion for Summary Judgment
	MEMO	CCNELSRF	Memorandum in Support for Motion for Summary Judgment
	NOTS	CCNELSRF	Notice Of Service
4/30/2009	SCHE	TCWEATJB	Scheduling Order
	HRSC	TCWEATJB	Hearing Scheduled (Motion for Summary Judgment 07/09/2009 03:00 PM)
5/12/2009	AFFD	CCNELSRF	Affidavit of Stephen Bekanich RE: Motion for Summary Judgment
	AFFD	CCNELSRF	Affidavit of Thomas Maile in Opposition to Defendants Motion for Summary Judgment
	AFFD	CCNELSRF	Affidavit of Sheri Arnold in Opposition to Defendants Motion for Summary Judgment
	AFFD	CCNELSRF	Affidavit of Joseph Dumoulin in Opposition to Defendants Motion for Summary Judgment

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Date: 10/20/2009

F. Judicial District Court - Ada County

User: CCTHIEBJ

Time: 12:44 PM

ROA Report

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Case: CV-OC-2008-18710 Current Judge: Cheri C. Copsey

Estate Of Judy Demoulin, etal. vs. CUNA Mutual Group

Estate Of Judy Demoulin, Joseph Dumoulin vs. CUNA Mutual Group

Date	Code	User		Judge
5/12/2009	MEMO	CCNELSRF	Memorandum in Brief in Opposition to Motion for Summary Judgment	Cheri C. Copsey
6/1/2009	MOTN	CCWRIGRM	Motion to Strike Portions of the Affidavits of Joseph Dumoulin and Sheri Arnold	Cheri C. Copsey
	MEMO	CCWRIGRM	Memorandum in Support of Motion	Cheri C. Copsey
	AFFD	CCWRIGRM	Affidavit of Records Custodian Certifying Records	Cheri C. Copsey
	RPLY	CCWRIGRM	Reply Memorandum in Support of Cuna Mutuals Motion for Summary Judgment	Cheri C. Copsey
	NOTH	CCWRIGRM	Notice Of Hearing (06/09/09 @ 3:00pm)	Cheri C. Copsey
	HRSC	CCWRIGRM	Hearing Scheduled (Hearing Scheduled 06/09/2009 03:00 PM) Motion to Strike Portions of the Affidavits	Cheri C. Copsey
6/2/2009	HRVC	TCWEATJB	Hearing result for Hearing Scheduled held on 06/09/2009 03:00 PM: Hearing Vacated Motion to Strike Portions of the Affidavits	Cheri C. Copsey
	AMEN	CCWRIGRM	Amended Notice of Hearing (07/09/09 @ 3:00pm)	Cheri C. Copsey
6/5/2009	NOTD	MCBIEHKJ	Notice Of Taking Deposition	Cheri C. Copsey
	NOTD	MCBIEHKJ	Notice Of Taking Deposition	Cheri C. Copsey
	MOTN	MCBIEHKJ	Motion to Continue Summary Judgment Hearing	Cheri C. Copsey
	AFFD	MCBIEHKJ	Affidavit in Support of Motion	Cheri C. Copsey
	NOTC	MCBIEHKJ	Notice of Hearing 7/9/09 @ 3 pm	Cheri C. Copsey
6/15/2009	NOTD	CCRANDJD	Notice Of Taking Deposition	Cheri C. Copsey
	AMEN	CCRANDJD	Amended Notice of Hearing (06.25.09@2pm) re Motion to Continue Summary Judgment	Cheri C. Copsey
	HRSC	CCRANDJD	Hearing Scheduled (Motion 06/25/2009 02:00 PM) Motion to Continue Summary Judgment Hearing	Cheri C. Copsey
6/17/2009	MEMO	CCTOWNRD	Memorandum in Opposition to Motion to Continue Summary Judgment Hearing	Cheri C. Copsey
	AFFD	CCTOWNRD	Affidavit of Counsel in Support of Opposition to Motion to Continue	Cheri C. Copsey
6/19/2009	HRVC	TCWEATJB	Hearing result for Motion for Summary Judgment held on 07/09/2009 03:00 PM: Hearing Vacated	Cheri C. Copsey
6/25/2009	AFOS	CCDWONCP	Affidavit Of Service (06/17/09)	Cheri C. Copsey
	AMEN	CCDWONCP	Amended Notice of Taking Deposition Duces Tecum of Vanessa L Rood RN	Cheri C. Copsey
	DCHH	TCWEATJB	Hearing result for Motion held on 06/25/2009 02:00 PM: District Court Hearing Held Court Reporter: Kim Madsen Number of Transcript Pages for this hearing estimated: Under 100 Pages	Cheri C. Copsey
	HRSC	TCWEATJB	Hearing Scheduled (Motion for Summary Judgment 07/16/2009 01:30 PM)	Cheri C. Copsey
6/29/2009	AFOS	MCBIEHKJ	Affidavit Of Service 6/17/09	Cheri C. Copsey

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Date: 10/20/2009

Fulton Judicial District Court - Ada County

User: CCTHIEBJ

Time: 12:44 PM

ROA Report

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Case: CV-OC-2008-18710 Current Judge: Cheri C. Copsey  
 Estate Of Judy Demoulin, etal. vs. CUNA Mutual Group

Estate Of Judy Demoulin, Joseph Dumoulin vs. CUNA Mutual Group

Date	Code	User		Judge
6/29/2009	NOTC	MCBIEHKJ	Notice to Vacate Deposition	Cheri C. Copsey
7/8/2009	ORDR	TCWEATJB	Order Denying Plaintiff's Motion To Continue Summary Judgment Hearing	Cheri C. Copsey
7/16/2009	DCHH	TCWEATJB	Hearing result for Motion for Summary Judgment held on 07/16/2009 01:30 PM: District Court Hearing Held Court Reporter: Kim Madsen Number of Transcript Pages for this hearing estimated: Under 100 Pages	Cheri C. Copsey
7/17/2009	ORDR	TCWEATJB	Order Granting Motion To Strike	Cheri C. Copsey
7/22/2009	ORDR	TCWEATJB	Order Granting Summary Judgment	Cheri C. Copsey
	CDIS	TCWEATJB	Civil Disposition entered for: CUNA Mutual Group, Defendant; Dumoulin, Joseph, Plaintiff; Estate Of Judy Demoulin,, Plaintiff. Filing date: 7/22/2009	Cheri C. Copsey
	HRVC	TCWEATJB	Hearing result for Jury Trial held on 01/19/2010 09:00 AM: Hearing Vacated	Cheri C. Copsey
	HRVC	TCWEATJB	Hearing result for Pretrial Conference held on 12/17/2009 04:30 PM: Hearing Vacated	Cheri C. Copsey
	STAT	TCWEATJB	STATUS CHANGED: closed	Cheri C. Copsey
7/28/2009	JDMT	TCWEATJB	Judgment	Cheri C. Copsey
8/10/2009	MOTN	CCWRIGRM	Defendants Motion for Fees and Costs	Cheri C. Copsey
	AFFD	CCWRIGRM	Affidavit of J Kevin West	Cheri C. Copsey
	MEMO	CCWATSCL	Memorandum in Support of Defendant's Motion for Fees and Costs	Cheri C. Copsey
8/18/2009	OBJE	MCBIEHKJ	Objection to Memo of Costs and Fees	Cheri C. Copsey
	MEMO	MCBIEHKJ	Memorandum in Support of Objection	Cheri C. Copsey
	NOHG	CCSIMMSM	Notice Of Hearing	Cheri C. Copsey
	HRSC	CCSIMMSM	Hearing Scheduled (Motion 09/17/2009 04:00 PM) DF's Motion for Fees and Costs	Cheri C. Copsey
	STAT	CCSIMMSM	STATUS CHANGED: Closed pending clerk action	Cheri C. Copsey
8/20/2009	APSC	CCTHIEBJ	Appealed To The Supreme Court	Cheri C. Copsey
8/21/2009	AMEN	CCWRIGRM	Amended Notice of Hearing (10/29/09 @ 3:00pm)	Cheri C. Copsey
	HRSC	CCWRIGRM	Hearing Scheduled (Hearing Scheduled 10/29/2009 03:00 PM) Defendants Motion for Fees and Costs	Cheri C. Copsey
	HRVC	TCWEATJB	Hearing result for Motion held on 09/17/2009 04:00 PM: Hearing Vacated DF's Motion for Fees and Costs	Cheri C. Copsey
8/31/2009	NOTC	MCBIEHKJ	Amended Notice of Appeal	Cheri C. Copsey

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Attorney at Law  
380 West State Street  
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Telephone: (208) 939-1000  
Idaho State Bar No. 2378

FILED  
OCT 02 2008  
J. DAVID NAVARRO, Clerk  
By KATHY J. BIEHL, DEPUTY

Attorney for THE ESTATE OF JUDY DUMOULIN, Deceased, by and through her Personal Representative and JOSEPH DUMOULIN, an individual

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
Deceased, by and through her Personal  
Representative and JOSEPH DUMOULIN,  
an individual.

Plaintiff,

vs.

CUNA Mutual Group, an Iowa corporation  
authorized by the State of Idaho, Department  
of Insurance, to transact business in the State  
of Idaho

Defendant.

Case No.

CV 00 0318710

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

COMES NOW, the Plaintiff herein, THE ESTATE OF JUDY DUMOULIN, Deceased, by and through her future appointed Personal Representative JOSEPH DUMOULIN, and JOSEPH DUMOULIN, an individual (hereinafter referred to as "Plaintiff Dumoulin"), and for a claim for relief from Defendants, complains and alleges as follows:

**COUNT ONE  
BREACH OF CONTRACT**

- I. Judy Dumoulin was an adult woman who at all relevant times hereto resided in the State of Idaho in the County of Ada. Joseph Dumoulin is an adult male who at all relevant times

hereto resided in the State of Idaho, County of Ada. All acts complained of herein occurred within the County of Ada, State of Idaho.

- II. Judy Dumoulin, died on March 17, 2008, at West Valley Medical Center in Caldwell, Canyon County, Idaho.
- III. That Defendant Cuna Mutual Group (hereinafter referred to as "Defendant Cuna") is an Iowa corporation authorized to transact insurance business in the State of Idaho by the State of Idaho, Department of Insurance.
- IV. That Defendant Cuna was at all relevant times herein lawfully transacting business in the State of Idaho, and was engaged in the business of issuing life insurance in the State of Idaho. Based upon information and belief, Defendant Cuna is authorized under its charter to insure persons against loss of life in the State of Idaho.
- V. Defendant Cuna issued and delivered to Judy Dumoulin a Group Accidental Death & Accidental Dismemberment Insurance with a Certificate Number of G1436570, (Group Policy Number GP 014DC) and by so doing, Defendant Cuna insured Judy Dumoulin as a named insured under the terms of the policy for loss of life, and all necessary premium payments for the benefit of Defendant Cuna were made by Judy Dumoulin and/or Joseph Dumoulin. Such policy of insurance was issued by Defendant Cuna with the policyholder of CU Members Health Insurance Trust, with the participating association with Pioneer Federal Credit Union. A true and correct copy of such policy of insurance is attached hereto as Exhibit "A" and incorporated herein by this reference as if set forth in full herein. That Plaintiff Joseph Dumoulin was a named beneficiary under the terms of said policy and/or the Estate of Judy Dumoulin is entitled to the proceeds of said insurance policy.

- VI.** That while said policy was in effect, and on or about March 2008, Judy Dumoulin was admitted to West Valley Medical Center, Caldwell, Idaho, and died by accidental causes during her treatment at the hospital.
- VII.** The available policy limit as set forth in the policy issued by Defendant Cuna is the amount of FORTY THOUSAND DOLLARS (\$40,000.00).
- VIII.** Pursuant to Idaho Code, Section 41-1839, on June 13, 2008, Thomas G. Maile, IV, attorney for Plaintiff Dumoulin, mailed a Proof of Claim to Defendant Cuna and DEFENDANT PIONEER, demanding payment of the proceeds due and owing under the terms of the subject policy. A true and correct copy of such Proof of Claim is attached hereto as Exhibit "B" and incorporated herein by this reference as if set forth in full herein. On June 18, 2008, Defendant Cuna, by and through its Claims Department, denied all liability for payment of the death proceeds under the above life insurance policy. A true and correct copy of letter of denial is attached hereto as Exhibit "C" and incorporated herein by this reference as if set forth in full herein.
- IX.** Plaintiff Dumoulin has performed all the conditions of the subject policy of life insurance and gave notice as required under the terms of the subject policy; and furnished and tendered proof of death in the manner required by the subject policy.
- X.** Defendant Cuna has denied all liability under the subject policy and certificates above referenced, notwithstanding the demand of Plaintiff Dumoulin for payment.
- XI.** There is now due and owing to Plaintiff Dumoulin the principal sum of FORTY THOUSAND DOLLARS (\$40,000.00), based upon the Certificate of Insurance for the deceased, Judy Dumoulin, together with interest thereon at the rate of twelve (12) percent per

annum from the date of death of Judy Dumoulin on March 17, 2008, until the date of Judgment, and thereafter at the highest legal rate until paid in full.

- XII.** That as a result of the above actions, Plaintiff Dumoulin has been forced to retain the professional services of Thomas G. Maile, IV, Attorney at Law, for the purpose of undertaking legal action. Plaintiff Dumoulin is entitled to a Judgment against Defendant Cuna, which Judgment should include costs and reasonable attorneys fees required by Plaintiff Dumoulin in connection with this legal action pursuant to Idaho Code, Sections 12-120 and 12-121. In addition, Defendant Cuna owes Plaintiff Dumoulin reasonable attorney fees pursuant to Idaho Code, Section 41-1839(1). That such attorneys fees are in the amount of \$13,334.00 if this matter is not contested, and a greater sum as may be determined by the Court if this matter is contested.

**COUNT TWO**  
**BREACH OF GOOD FAITH AND FAIR DEALING**

- XIII.** Plaintiff Dumoulin re-alleges the allegations contained in paragraphs I through XII of Count One as if the same were set forth in full herein.
- XIV.** Plaintiff Dumoulin provided Defendant Cuna with all requested information and/or all information available to Plaintiff Dumoulin to justify and support their claim for payment of death benefits under the policy of insurance between Defendant Cuna and Judy Dumoulin.
- XV.** Plaintiff Dumoulin has duly demanded in writing for payment from Defendant Cuna of death benefits under the subject policy. A true and correct copy of such Proof of Claim is attached hereto as Exhibit "B" and incorporated herein by this reference as if set forth in full herein. More than sixty (60) days has elapsed since formal demand through legal counsel, and

Defendant Cuna has failed and refused, and continues to fail and refuse to pay death benefits to Plaintiff Dumoulin under the terms of the subject policy, and the same constitutes a breach of Defendant Cuna's obligation of "Good Faith and Fair DEALING".

**XVI.** That as a result of the above-alleged, Plaintiff Dumoulin has retained the professional services of Thomas G. Maile, IV, Attorney at Law, for the purpose of undertaking legal action. Plaintiff Dumoulin is entitled to a Judgment against Defendant Cuna, which Judgment should include costs and reasonable attorneys fees required by Plaintiff Dumoulin in connection with this legal action pursuant to Idaho Code, Sections 12-120 and 12-121. In addition, Defendant Cuna owes Plaintiff Dumoulin reasonable attorney fees pursuant to Idaho Code, Section 41-1839(1). That such attorneys fees are in the amount of \$13,334.00 if this matter is not contested, and a greater sum as may be determined by the Court if this matter is contested.

#### **DEMAND FOR JURY TRIAL**

Plaintiff Dumoulin hereby makes demand for jury trial on all issues triable by jury in the above-captioned matter.

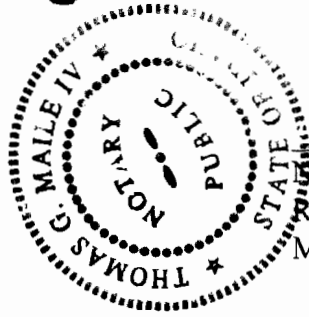
#### **PRAYER**

WHEREFORE, Plaintiff Dumoulin prays for Judgment against Defendant Cuna, as follows:

1. For the principal sum of FORTY THOUSAND DOLLARS, together with pre-judgment interest thereon from and after March 17, 2008, to the date of Judgment, and thereafter at the highest legal rate until paid in full.
2. For Plaintiff Dumoulin's costs and attorneys fees incurred herein in the sum of \$13,334.00 if this matter is not contested, and a greater sum as may be determined by the Court if







*Thomas G. Maile IV*  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at Boise, Idaho  
My Commission Expires July 30, 2014



CUNA Mutual Insurance Society

Administrative Office  
P.O. Box 61 • Waverly, IA 50677-0061  
Phone: 800/779-5433

## CERTIFICATE OF INSURANCE

### GROUP ACCIDENTAL DEATH & ACCIDENTAL DISMEMBERMENT INSURANCE

Benefits provided for *accidental death* or *accidental dismemberment* and covered *injuries* only.

Benefit Reduction at Age 70.

CUNA Mutual Insurance Society (called "we," "us," or "our") promises to provide the benefits, as described in the *policy*, if all its terms and conditions are met. This certificate is issued to the *insured* (also called "you", "your" or "yours" under this certificate) based on *your* enrollment and in exchange for timely payment of premiums.

### CERTIFICATE SCHEDULE

<b>CREDIT UNION NUMBER:</b> 111-0071-1		<b>CERTIFICATE NUMBER:</b> G1436570			
<b>INSURED MEMBER:</b> Judy A Dumoulin					
<b>PLAN:</b> Family		<b>QUARTERLY PREMIUM:</b> \$16.80			
<b>EFFECTIVE DATE:</b> 11-01-2007					
<b>INITIAL INFLATION PROTECTION START DATE:</b> 11-01-2007		<b>INSURANCE PERIOD:</b> Quarterly			
		<b>COVERED SPOUSE</b>		<b>EACH COVERED CHILD</b>	
<b>ADDITIONAL AMOUNT</b>	<b>INSURED</b>	<b>(With Children)</b>	<b>(No Children)</b>	<b>(With Spouse)</b>	<b>(No Spouse)</b>
Under Age 70:	\$40,000	\$20,000	\$24,000	\$8,000	\$10,000
Age 70 and Over:	\$20,000	\$10,000	\$12,000	N/A	N/A
<b>BASIC AMOUNT</b>					
Under Age 70:	\$1,000	N/A	N/A	N/A	N/A
Age 70 and Over:	\$500	N/A	N/A	N/A	N/A
<b>BASIC AMOUNT BENEFIT PERIOD:</b> Lifetime					

Group Policy No.: GP014DC

Policyholder: CU Members Health Insurance Trust


Participating Association: PIONEER FEDERAL CREDIT UNION

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OTHER BENEFITS FOR MEMBER ONLY		WHO RECEIVES BENEFITS .....	PART 9
PLAN AND FAMILY PLAN .....	PART 4	WHEN THERE IS A CLAIM .....	PART 10
OTHER BENEFITS FOR FAMILY PLAN ONLY .....	PART 5	GENERAL PROVISIONS .....	PART 11

**YOUR RIGHT TO EXAMINE THIS CERTIFICATE FOR 31 DAYS:** You may return this certificate to *us* for any reason and get a refund within 31 days of: (1) the date *you* received the certificate or, if later; (2) the effective date shown on *your* certificate schedule. We will refund any premiums paid. The certificate will be void from the start and will be treated as if it had not been issued.

Signed for CUNA Mutual Insurance Society, Madison, Wisconsin, on the effective date.



President

00013

EXHIBIT "A"

## PART 1: DEFINITIONS

**accident:** An occurrence which is unexpected or unforeseen, either as to its cause or as to its result.

**accidental death:** Death resulting from an *injury*, and occurring within 1 year of the date of the *accident* causing the *injury*.

**accidental dismemberment:** A *dismemberment* resulting from an *injury*, and occurring within 1 year of the date of the *accident* causing the *injury*.

**additional amount:** The contributory amount of coverage which is in addition to your *basic amount*. The *additional amount* is elected by you. You may elect either the member only plan, which provides an *additional amount* of coverage for yourself, or a family plan, which provides an *additional amount* of coverage for yourself and your covered dependents. If there is at least one covered child, the covered spouse's *additional amount* is equal to 50% of your *additional amount*. If there are no covered children, it is equal to 60% of your *additional amount*. If there is a covered spouse, each covered child's *additional amount* is equal to 20% of your *additional amount*. If there is no covered spouse, it is equal to 25% of your *additional amount*. The plan type elected and each covered person's *additional amount* is shown on your certificate schedule.

**basic amount:** The non-contributory amount of coverage provided for you only for the duration of the *basic amount* benefit period. Your *basic amount* is provided by the participating association. The *basic amount* and *basic amount* benefit period, as of your effective date, are shown on your certificate schedule.

**beneficiary:** The person who receives the payment of benefit, as provided under this certificate. See Part 9.

**covered person:** You, and if the family plan is elected, the following dependents (provided coverage has become effective):

- a.) your legal spouse; and
- b.) each of your lawful children who have never been married, and are:
  - 1). under 18 years of age; or
  - 2). under 25 years of age, and:
    - a.) are enrolled as full-time students at an accredited school, college or university; and
    - b.) are dependent on you for at least 50% of their financial support and maintenance; or
  - 3.) handicapped prior to age 18. Coverage is extended for as long as the child is handicapped and coverage under the family plan remains in force. We reserve the right to require satisfactory proof of the handicap be provided within 60 days of their 18<sup>th</sup> birthday. Satisfactory proof of their continued handicap will be required at the time of claim for benefits. The term "handicap" or "handicapped" means totally incapable of self-sustaining employment due to mental or physical handicap and primarily dependent on the *insured* or *his* spouse for financial support and maintenance.

Newborn infants will be covered from the moment of birth. The term "lawful children" includes your stepchildren, children born to you, and children legally adopted (or pending finalization of proposed adoption), by you. Lawful children also includes grandchildren who physically reside with you, and who are primarily dependent on you for their financial support and maintenance.

The term "legal spouse" means the one to whom you are lawfully married. If a spouse ceases to be your legal spouse for reasons other than death, they will no longer be covered as of the next premium *due date*.

A specific *covered person* may be referred to individually as a "covered spouse" or "covered child". A specific group of *covered persons* may be referred to as "covered children" which includes each covered child, or "covered dependents", which includes both the covered spouse and covered child/children.

**dismemberment:** *Dismemberment* refers to the loss of: hand(s); foot or feet; sight; speech; hearing; thumb and index finger of same hand; or thumb. Loss of a hand or foot means complete severance at or above the wrist or ankle joint. Loss of sight means total and irrecoverable loss of the entire sight of the eye (visual acuity of 20/200 or less). Loss of hearing means total and irrecoverable loss of hearing in both ears. Loss of speech means total and irrecoverable loss of the ability to speak. Loss of index finger means total and permanent severance at or below the second joint (loss of the first and second phalanges). Loss of thumb means total and permanent severance below the first joint (loss of the distal and middle phalanx). Loss does not include loss of use.

**due date:** The date required premiums are to be paid to us. If you elect to pay premiums by automatic account deductions, premiums are due when first presented for deduction from your account.

**he, him or his:** This reference includes either male or female.

**insurance period:** The period of time (one month or three months as shown on your certificate schedule) used to determine your coverage stop dates in the event of termination. See Part 7.02.

**injury, injuries:** Bodily damage or harm which: (a) is caused directly by an *accident* and independently of all other causes; (b) is effected solely through external means; and (c) occurs while a *covered person's* insurance is in force under your certificate.

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**insured:** The participating association's member who is eligible and enrolls for coverage. The *insured* is named on the certificate schedule.

**loss:** Accidental death or accidental dismemberment.

**policy:** The group policy under which this certificate is issued. It is the controlling contract and is held by the policyholder.

**policyholder:** The entity that holds the group policy under which this certificate is issued.

**you, your, yourself, or yours:** The *insured*.

**we, our, us:** CUNA Mutual Insurance Society.

## PART 2: COVERAGE PROVIDED

**2.01 Coverage:** While this certificate is in effect, benefits are provided to *covered persons* for *accidental death* and *accidental dismemberment*. Additional benefits, as described in the certificate, are also provided for *loss* and *covered injuries*. We will pay the benefit(s) provided by the *policy*, subject to the benefit reduction provision described in Part 2.03.

Unless otherwise specified, only one benefit for each *covered person*, whichever is greatest, will be paid as a result of any one *accident*.

**2.02 Inflation Protection:** A *covered person's additional amount* will increase automatically 2 years from the initial inflation protection start date shown on the certificate schedule. It will increase each 2 year period thereafter while *his* coverage remains continuously in force, up to a maximum of 5 consecutive increases. Each increase will be equal to 5% of the *covered person's additional amount* (not including any prior inflation protection increases). If *you* request an increase to *your additional amount* at any time, the inflation protection benefit will be calculated separately for the amount of the increase, beginning on *your* certificate anniversary date on or next following the effective date of the increase. If *you* request a change to *your plan* or a decrease to *your additional amount*, the inflation protection provision will start over as of the effective date of such change or decrease. Any prior increases will no longer be in effect.

**2.03 Benefit Reduction At Age 70:** *Your basic amount* and *additional amount* are reduced by 50% on *your* 70th birthday. *Your covered spouse's additional amount* is reduced by 50% on *his* 70th birthday. If *you* or *your covered spouse* are age 70 or greater on the effective date of coverage, the reduction is effective for that person as of that date.

## PART 3: BENEFIT PAYABLE FOR LOSS

**3.01 Accidental Death And Dismemberment Benefit:** If a *covered person* suffers an *accidental death* or *accidental dismemberment*, we will pay a benefit based on the applicable percentage(s) as shown in the following table. The applicable percentage(s) will be multiplied by the *basic amount* and *additional amount* shown on *your* certificate schedule for that *covered person*. Only one benefit, whichever is greatest, will be paid for a *covered person's loss* as a result of a single *accident*.

The <i>basic amount</i> and <i>additional amount</i> are shown on <i>your</i> certificate schedule.		
TYPE OF LOSS	% of Basic Amount	% of Additional Amount
	Insured	Each Covered Person
Accidental Death	100%	100%
Two of the following: hand, foot or eye	100%	100%
One of the following: hand, foot or eye	100%	50%
Speech or Hearing	100%	50%
Thumb and index finger of same hand	100%	25%
One Thumb	None	Lesser of: 10% or \$1,000

**3.02 Travel By Common Carrier:** If *you* suffer an *accidental death* as a direct result of a collision, crash or sinking of a duly licensed common carrier while riding as a ticketed passenger on board such common carrier, we will double the benefit amount payable for the *loss*. Common carrier means any public air, land or water conveyance operated under a license for regularly scheduled passenger service.

## PART 4: OTHER BENEFITS FOR MEMBER ONLY PLAN AND FAMILY PLAN

**4.01 Hospital Confinement:** If a *covered person* sustains an *injury* requiring *him* to be confined as an inpatient in a hospital, and *he* remains in the hospital continuously for a period of more than 7 days, we will pay a benefit calculated from the first day of *his* confinement. The first day of *his* confinement must occur within 1 year of the date of the *accident* causing the confinement. The benefit amount is equal to 1% of *his additional amount* for each full month of confinement, up to a maximum benefit amount of \$1,000 per month. This benefit is payable for a maximum of 12 months. For a partial month, each daily benefit will be equal to 1/30<sup>th</sup> of the monthly benefit. The number of days of confinement will be determined based on the number of days the hospital charges for room and board.

The term "hospital" means an institution: (a) located in the United States, in Canada, or on any United States military base; (b) licensed as a hospital by the state or province in which it is located; and (c) operating within the scope of its license when rendering services in the treatment of the *injury* for which claim is made. It does not mean a place or any part of a place, even if it is called a hospital, that is operated mainly for: rest; convalescence; extended care; rehabilitation; care of the aged; care or treatment of drug addicts or alcoholics; or mental disorders.

The term "inpatient" means a *covered person* who is confined in a hospital as a resident bed patient, and as a result of the confinement, the hospital charges its usual and customary daily charge for room and board. This does not include confinement if it is not necessary for medical treatment, or if the *covered person* is using the hospital primarily as a place for rest, nursing, convalescence, rehabilitation or extended care.

This benefit is in addition to all other benefits payable under this policy as a result of the *accident*.

## PART 5: OTHER BENEFITS FOR FAMILY PLAN ONLY

**5.01 Child Care Assistance:** If the family plan has been selected and the *insured* or covered spouse suffers an *accidental death*, a child care assistance benefit will be paid to the *beneficiary*. This benefit will be paid for each month following death that any covered child, who is less than 14 years of age, requires child care service. Child care service must be provided for at least 120 hours per month. This benefit is payable for 12 months following the date of the *accident*. The monthly benefit amount, regardless of the number of children eligible for the benefit, is 1/12<sup>th</sup> of 2% of the deceased person's *additional amount*, up to a maximum amount of \$160 per month.

The term "child care service" means those services provided by a child care facility or child care provider operating in compliance with all state and local regulations, and for a fee. It does not mean services provided by the child's immediate family. Immediate family includes father, mother, brother, sister, or grandparent, and like step-relationships.

This benefit is in addition to all other benefits payable under the *policy* as a result of the *accident*.

**5.02 Child Saving's Fund:** If the family plan has been selected and the *insured* suffers an *accidental death*, a benefit amount equal to \$1,000 for each covered child as of the date of the *accident* will be payable to *your beneficiary*. *Your beneficiary* will receive proceeds in a single sum, and may elect to apply the proceeds, for the benefit of each covered child, as follows:

- a.) CD Option: Purchase of Certificate of Deposit(s) at the duration elected by *your beneficiary*.
- b.) Saving's Deposit Option: Deposit in share saving's account(s) established by the *beneficiary*.
- c.) Other Option: Deposit, purchase or invest in other available financial instrument(s).

This benefit is in addition to all other benefits payable under the *policy* as a result of the *accident*.

**5.03 Education Assistance:** If the family plan has been selected and the *insured* sustains an *injury* resulting in *accidental death*, we will pay an additional benefit equal to 2% of *his additional amount*, to a maximum of \$3,000 per year for:

- a.) each covered child who:
  - 1.) is enrolled on the date of the *accident* as a full-time student in an accredited institution of higher learning beyond the 12<sup>th</sup> grade; or
  - 2.) was at the 12<sup>th</sup> grade level and within 1 year following the *accident* enrolls as a full-time student in such institution.
- b.) a covered spouse who:
  - 1.) is enrolled on the date of the *accident* as a full-time student in an accredited institution of higher learning beyond the 12<sup>th</sup> grade; or
  - 2.) subsequently enrolls as a full-time student within 2 years following the *accident* in such institution.

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This benefit will be paid annually while the child or spouse continues their education without interruption at such institution for a maximum of 5 consecutive annual payments, per child or spouse. This benefit is in addition to all other benefits payable under the *policy* as a result of the *accident*.

**5.04 Grief Counseling:** If the family plan has been selected and a *covered person* sustains an *injury* resulting in *accidental death*, we will pay a benefit for counseling services provided to surviving *covered persons* within 1 year of the date of death. Such counseling must be provided by a paid licensed medical or mental health counselor. The benefit amount is equal to \$50 per counseling session, and is limited to a total of 10 sessions for all *covered persons* combined.

This benefit is payable in a single lump sum and is in addition to all other benefits payable under the *policy* as a result of the *accident*.

## **PART 6: EXCLUSIONS – WHAT IS NOT COVERED**

**6.01 Exclusions:** No benefit will be paid for any *loss* or *covered injury* that:

- a.) is due to intentionally self-inflicted *injury*; or
- b.) is due to suicide or any attempted suicide while sane or insane (for Colorado and Missouri residents: suicide while sane); or
- c.) occurs while under the influence of any illegal drug, or any legal drug if it is not used in accordance with the usage instructions for that drug; or
- d.) is due to a declared war, undeclared war, or any act of war, which includes but is not limited to attacks using weapons of mass destruction; or
- e.) occurs while flying as a pilot or flight crew member; or
- f.) occurs while participating in any kind of race or competition as a professional; or
- g.) occurs while operating a motorized vehicle with a blood alcohol level exceeding the legal limit as defined by state law in which the *accident* occurs; or
- h.) occurs while committing or attempting to commit an assault or felony; or
- i.) is due to any disease, sickness, bodily or mental illness, or complication resulting from medical treatment, surgery, pregnancy or childbirth.

## **PART 7: COVERAGE START AND STOP DATES**

**7.01 Your Start Date:** Upon payment of the first premium, coverage for *you* and *your* covered dependents, if any, will take effect as of the effective date shown on *your* certificate. We must receive payment of *your* first premium on or prior to the *due date* and while *you* are alive.

**7.02 Your Stop Date:** *Your* coverage will stop automatically:

- a.) at the end of the *insurance period* in which *you* cease to be a member of the participating association; or
- b.) on the date *your* certificate lapses due to nonpayment of the required premium; or
- c.) at the end of the *insurance period* in which the *policy*, or the participating association's coverage under the *policy* terminates; or
- d.) on the date of *your* death; or
- e.) following *your* written request to terminate coverage, and will be effective on the earlier of:
  - 1.) the last day of the *insurance period*; or
  - 2.) the last day covered by *your* last premium payment; and
- f.) for the *basic amount* only, at the end of the benefit period determined by the participating association. A participating association may change the *basic amount* benefit period for members enrolled for coverage. Any such change will be administered in a non-discriminatory manner.

A covered dependent's coverage will stop automatically:

- a.) at the end of the *insurance period* in which *he* is no longer a covered dependent; or
- b.) upon termination of *your* coverage for any reason.

## **PART 8: PREMIUMS**

**8.01 Payment Of Premiums:** *Your* premiums are due and payable to *us* on or prior to the *due date*.

**8.02 Premium Changes:** We reserve the right to change premium rates on any *due date*. We will not change *your* premiums because of a change in *your* health or occupation. *You* will receive advance notice from *us* regarding any change in premium. Premium rates can not be changed more than once per year.

**8.03 Grace Period:** This certificate has a 31 day grace period. This means that if a premium is not paid on or before the *due date*, it may be paid during the 31 days following the *due date*. During the grace period, the certificate will stay in force. This grace period does not apply to the first premium payment.

**8.04 Reinstatement:** If a premium is not paid before the end of the 31 day grace period, *your* coverage will lapse as of the last day covered by *your* last premium payment. If we later accept a premium payment and do not require an application for reinstatement, that payment will put *your* coverage back in force. We reserve the right to require an application for reinstatement and evidence of insurability satisfactory to us. If we require an application for reinstatement and evidence of insurability, *your* coverage will be put back in force on the earlier of: (a) the date we approve reinstatement; or (b) the 45<sup>th</sup> day after the date of application for reinstatement, unless we give *you* prior written notice of its disapproval.

*Your* reinstated certificate only provides a benefit for *loss* or covered *injury* due to an *accident* that occurs after the date we receive *your* payment to put *your* coverage back in force. In all other respects, *you* and CUNA Mutual Insurance Society have the same rights under the certificate as were in effect before it lapsed, except for any special conditions added as an endorsement to *your* certificate as a result of reinstatement.

## PART 9: WHO RECEIVES BENEFITS

**9.01 Beneficiary:** All benefits will be paid to *you*, if living. Unless *you* specify otherwise, benefits due to *accidental death* will be paid as follows:

- a.) at *your* death, to *your* legal spouse, if living; otherwise, equally to *your* then living lawful children, if any; otherwise to *your* estate;
- b.) at the death of a covered spouse, to *you*, if living; otherwise, equally to the covered spouse's then living lawful children, if any; otherwise to the estate of the covered spouse;
- c.) at the death of a covered child, to *you*, if living; otherwise to *your* legal spouse, if living; or finally to the estate of the covered child.

**9.02 Change Of Beneficiary:** *You* can change the *beneficiary* at any time by written request, unless *you* indicate that a *beneficiary* cannot be changed (an irrevocable *beneficiary*). The written consent of each irrevocable *beneficiary* will be required as a part of such written request.

A request for change of *beneficiary* will not be effective until it is recorded at *our* administrative office. After it has been recorded, it will take effect as of the date *you* signed the request. However, we will not be responsible for any payment made or other action taken before we record the request.

## PART 10: WHEN THERE IS A CLAIM

**10.01 Notice Of Claim:** Notice of claim must be given to *us* within 30 days after the date the *loss* or covered *injury* occurs, or as soon as reasonably possible. *You* may give notice by contacting *us* or *you* may have someone do it for *you*.

**10.02 Claim Forms:** When we are notified of a claim, we will send the claimant forms for filing proof of *loss* or covered *injury*. If we do not send the forms within 10 days, the claimant can meet the requirement for filing proof by providing *us* with a written statement describing what happened, including the date, the type and the extent of the *loss* or covered *injury*. We must receive this statement within the time given for filing such proof.

**10.03 Proof Of Loss Or Covered Injury:** Written proof of *loss* or covered *injury* must be sent to *us* within 90 days after the date of the *loss* or covered *injury*, or as soon as reasonably possible. Proof must, however, be furnished no later than 1 year from the time it is otherwise required, except in the absence of legal capacity.

**10.04 Payment Of Claims:** All benefits covered by this certificate are payable as soon as we receive proper proof sufficient to determine liability. Payment will be made in accordance with the *beneficiary* designation in effect at the time of the *accident*, as described in Part 9. Payment will be made in a single sum, unless an optional mode of settlement has been selected. Optional modes of settlement are available upon written request by the *beneficiary*.

If benefits are payable to an estate, or *beneficiary* who cannot execute a valid release, a benefit amount, up to \$5,000, or the amount allowed by state law, may be paid to someone related to the *insured* or *beneficiary* who we deem to be equitably entitled to such payment. Such amount may also be paid to a funeral home for payment of final expenses, if allowed by state law. Upon payment, we are discharged to the extent that such payment is made in good faith.

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**10.05 Physical Exam And Autopsy:** We, at *our* own expense, have the right to examine a *covered person* when and as often as is reasonably required while a claim is pending. We may also have an autopsy done in case of death (except in Mississippi and other states where it is forbidden by law).

**10.06 Legal Actions:** No legal action: (a) can be brought against *us* for at least 60 days after written proof of *loss* or covered *injury* has been furnished; and (b) can be brought more than 3 years after written proof of *loss* or covered *injury* has been furnished.

#### PART 11: GENERAL PROVISIONS

**11.01 Entire Contract:** Your certificate is furnished in accordance with and subject to the terms of the *policy*. It is not part of the *policy*, but it is evidence of the insurance provided under the *policy*. The *policy* and any attachments form the entire contract of insurance.

**11.02 Misstatement Of Age:** If *your* age has been misstated, all amounts payable under the *policy* will be those the premium paid would have purchased at *your* correct age. If, according to a *your* correct age, the coverage provided by this certificate would not normally have been in effect, then *our* liability is limited to the refund of all premiums paid for such period.

**11.03 Other Insurance With Us And Duplicate Coverage:** You may not be the *insured* under more than one certificate per participating association. Upon discovery of a duplication, we will consider *you* to be covered under the certificate which provides the greatest amount of coverage, and will refund any duplicated premium payments which may have been made by or on your behalf..

In addition, we reserve the right to limit the total *additional amount* for a *covered person* to the maximum allowable amount of coverage according to *our* underwriting rules then in effect. If the total amount of coverage exceeds this limit, it will be reduced to the maximum allowable amount, and we will refund the portion of premiums paid which are attributable to the amount of the reduction.



## PROOF OF LOSS TO COMPLY WITH SECTION 41-1839, IDAHO CODE

NAME OF INSURED: Judy Dumoulin  
Social Security Number 516-64-8114

CLAIMANT: The Estate of Judy Dumoulin, Deceased, by and through her  
Personal Representative, Joseph Dumoulin and as surviving  
spouse, and named beneficiary  
c/o Thomas G. Maile, IV  
Attorney for the Estate of Judy Dumoulin, Deceased  
380 West State Street  
Eagle, Idaho 83616  
Telephone: (208) 939-1000

ATTORNEY FOR INSURED: Thomas G. Maile, IV  
Attorney for the Estate of Judy Dumoulin, Deceased  
380 West State Street  
Eagle, Idaho 83616  
Telephone: (208) 939-1000

DATE OF DEATH/LOSS: March 17, 2008

NAME OF POLICY: CU Members Health Insurance Trust

AMOUNT OF POLICY: \$40,000.00

NUMBER OF POLICY: G1436570 (Certificate Number)  
111-0071-1 (Credit Union Number)

EFFECTIVE DATE: November 1, 2007

AGENCY ISSUING POLICY: CUNA Mutual Group  
Post Office Box 61  
Waverly, IA 50677-0061

PLEASE TAKE NOTICE that at the time of the loss hereinafter described, the above policy  
of insurance was issued by you for death benefits. The above-named Decedent, Judy Dumoulin,

### PROOF OF LOSS FOR CUNA MUTUAL GROUP - 1

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died on March 17, 2008, as a result of an accidental death caused by medical negligence. A true and correct copy of the Certificate of Death and Attending Physician's Statement are attached hereto as Exhibit "A" and incorporated herein by this reference.

AMOUNT CLAIMED UNDER THE TERMS OF THIS POLICY: The claimant claims the full amount due under the terms of the policy. Said demand may be amended depending upon circumstances out the control of the claimant herein.

THE CLAIMANT MAKES DEMAND PURSUANT TO IDAHO CODE SECTION 41-1839 WHICH PROVIDES FOR THE ALLOWANCE OF ATTORNEY FEES IN SUITS AGAINST INSURERS. RELEVANT PORTIONS OF SAID LAW ARE PROVIDED:

(1) Any insurer issuing any policy, certificate or contract of insurance, surety, guaranty or indemnity of any kind or nature whatsoever, which shall fail for a period of thirty (30) days after proof of loss has been furnished as provided in such policy, certificate or contract, to pay to the person entitled thereto the amount justly due under such policy, certificate or contract, shall in any action thereafter brought against the insurer in any court in this state for recovery under the terms of the policy, certificate or contract, pay such further amount as the court shall adjudge reasonable as attorney's fees in such action.

(2) In any such action, if it is alleged that before the commencement thereof, a tender of the full amount justly due was made to the person entitled thereto, and such amount is thereupon deposited in the court, and if the allegation is found to be true, or if it is determined in such action that no amount is justly due, then no such attorney's fees may be recovered.

(3) This section shall not apply as to actions under the worker's compensation law which are subject to section 72-611, Idaho Code. This section shall not apply to actions against surety insurers

**PROOF OF LOSS FOR CUNA MUTUAL GROUP - 2**

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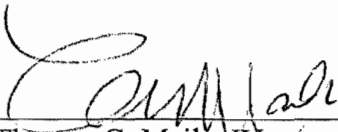
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by creditors of or claimants against a principal and arising out of a surety or guaranty contract issued by the insurer as to such principal, unless such creditors or claimants shall have notified the surety of their claim, in writing, at least sixty (60) days prior to such action against the surety

The claimant on behalf of the insured will seek appropriate attorneys fees and costs as set forth above in the event payment is not timely made. In addition your payment must be made to the claimant at the address of the attorney 380 West State Street, Eagle Idaho 83616.

The insured fulfilled all of the terms of the policy in that all premiums were paid current and that no attempt to deceive the said underwriter was in any manner made at any time. Any other information that may be required will be furnished and considered part of this Proof of Loss.

DATED This 10th day of June, 2008.



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Thomas G. Maile, IV,  
Attorney for Claimant  
380 West State Street, Eagle, Idaho 83616  
Telephone: (208) 939-1000

**PROOF OF LOSS FOR CUNA MUTUAL GROUP - 3**

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**VERIFICATION**

STATE OF IDAHO     )  
                              ) ss:  
County of Ada         )

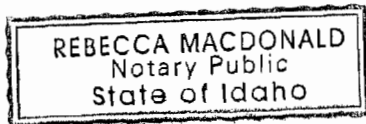
THOMAS MAILE, being first duly sworn deposes and says:

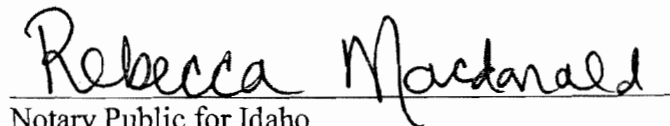
That he is the attorney for the Estate of Judy Dumoulin, Deceased, and named beneficiary Joseph Dumoulin, and that he has read the foregoing Proof of Loss to Comply with Section 41-1839, Idaho Code, knows the contents thereof and believes the facts stated therein to be true, and acknowledges he has executed the same on behalf of said Estate.

DATED this 10th day of June, 2008.

  
\_\_\_\_\_  
THOMAS MAILE

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for said State, this 10th day of June, 2008.



  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at Eagle, Idaho  
My Commission Expires 1-21-2009

**PROOF OF LOSS FOR CUNA MUTUAL GROUP - 4**

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*CUNA Mutual Insurance Society*

JUNE 18, 2008

To The Family of:  
Judy Dumoulin  
PO Box 4  
Middleton ID 83644

Re: Judy Dumoulin, Deceased  
111-0005-4 A5818758

Dear Family Members:

We extend our sympathy to you on the loss of Judy Dumoulin.

This certificate covers losses due to death or dismemberment caused by accidental means. Losses due to illness or medical conditions are not covered by this certificate. If the manner of death was due to an accident, please contact our office.

You may have also notified our company about another policy for Judy Dumoulin. If so, you should be receiving forms and instructions directly from the Claims department under a separate mailing.

If you have any questions, please call us at 1-800-779-5433.

Sincerely,

Claims Department

4ZZ-ROLS/DD105

ORIGINAL

NO. 26D  
FILED 4:57  
A.M. PM.

OCT 31 2008

J. DAVID NAVARRO, Clerk  
By J. RANDALL  
DEPUTY

J. Kevin West, ISB #3337  
E-mail: [jkw@hallfarley.com](mailto:jkw@hallfarley.com)  
HALL, FARLEY, OBERRECHT & BLANTON, P.A.  
702 West Idaho, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701  
Telephone: (208) 395-8500  
Facsimile: (208) 395-8585  
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Attorneys for Defendant CUNA Mutual Group

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
Deceased, by and through her Personal  
Representative and JOSEPH DUMOULIN, an  
individual,

Plaintiff,

vs.

CUNA Mutual Group, an Iowa corporation  
authorized by the State of Idaho, Department  
of Insurance, to transact business in the State  
of Idaho,

Defendant.

Case No. CV OC 0818710

**ANSWER TO COMPLAINT AND  
DEMAND FOR JURY TRIAL**

COMES NOW defendant CUNA Mutual Insurance Agency, Inc., d/b/a CUNA Mutual Group (hereinafter "CUNA"), by and through its counsel of record, Hall, Farley, Oberrecht & Blanton, P.A., and hereby answers plaintiff's Complaint and Demand for Jury Trial (hereinafter "Complaint") on file herein as follows:

### **FIRST DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief may be granted against defendant CUNA.

### **SECOND DEFENSE**

Defendant denies each and every paragraph and allegation of plaintiff's Complaint, unless specifically admitted herein.

With regard to the specific allegations in plaintiff's Complaint, defendant CUNA answers as follows:

#### **COUNT ONE** **BREACH OF CONTRACT**

I. In answer to paragraph I of plaintiff's Complaint, CUNA is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

II. In answer to paragraph II of plaintiff's Complaint, CUNA is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and, therefore, denies the same.

III. In answer to paragraph III of plaintiff's Complaint, CUNA admits that it is a non-stock issuing group health insurance company incorporated and existing under the laws of the state of Wisconsin, with its principal place of business in the state of Wisconsin. CUNA further admits it is authorized to transact business in Idaho.

IV. In answer to paragraph IV of plaintiff's Complaint, CUNA admits the allegations contained in paragraph IV.

V. In answer to paragraph V of plaintiff's Complaint, CUNA admits only that it issued to Judy Dumoulin a Group Accidental Death & Accidental Dismemberment Insurance

policy with a Certificate Number of G1436570. CUNA denies the remaining allegations contained in sentence one of paragraph V. CUNA further admits that the policy of insurance was issued by CUNA with the policyholder of CU Members Health Insurance Trust, with the participating association with Pioneer Federal Credit Union. Concerning the remaining allegations contained in paragraph V of plaintiff's Complaint, CUNA is presently without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained therein and, therefore, denies the same. The documents attached to plaintiff's Complaint speak for themselves.

VI. In answer to paragraph VI of plaintiff's Complaint, CUNA is presently without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained therein and, therefore, denies the same.

VII. In answer to paragraphs VII of plaintiff's Complaint, CUNA admits the allegations contained therein.

VIII. In answer to paragraph VIII of plaintiff's Complaint, CUNA admits only that at some time in June 2008, CUNA received a letter from plaintiff's attorney regarding the death of Judy Dumoulin. CUNA admits that on June 18, 2008, it sent a letter to plaintiff denying the claim and stating that losses due to illness or medical conditions are not covered by the insurance certificate 111-0005-4 A5818758. CUNA is presently without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained therein and, therefore, denies the same. CUNA further states that the exhibits attached to plaintiff's Complaint speak for themselves.

IX. In answer to paragraph IX of plaintiff's Complaint, CUNA denies the allegations contained therein.



X. In answer to paragraph X of plaintiff's Complaint, CUNA denies the allegations contained therein.

XI. In answer to paragraph XI of plaintiff's Complaint, CUNA denies the allegations contained therein.

XII. In answer to paragraph XII, this appears to contain plaintiff's legal conclusions or opinions concerning his own complaint and, to the extent a response is required thereto, CUNA denies said allegations.

**COUNT TWO**  
**BREACH OF GOOD FAITH AND FAIR DEALING**

XIII. In answer to paragraph XIII of plaintiff's Complaint, which purports to repeat and incorporate prior allegations and to the extent any response is required to such allegations, CUNA reasserts and incorporates by this reference its prior responses to all such allegations.

XIV. In answer to paragraph XIV of plaintiff's Complaint, CUNA denies the allegations contained therein.

XV. In answer to paragraph XV of plaintiff's Complaint, this appears to contain plaintiff's legal conclusions and, to the extent a response is required thereto, CUNA denies said allegations. CUNA further states that the exhibits attached to plaintiff's Complaint speak for themselves.

XVI. In answer to paragraph XVI of plaintiff's Complaint, this appears to contain plaintiff's legal conclusions concerning his own complaint and, to the extent a response is required thereto, CUNA denies said allegations.

**DEMAND FOR JURY TRIAL**

Defendant CUNA, pursuant to Rule 38(b) of the Idaho Rules of Civil Procedure, hereby demands a trial by jury of the plaintiff's action for damages.

## **PRAYER**

Plaintiff's Complaint finally contains what is commonly referred to as "Plaintiff's Prayer for Relief" and, to the extent any response is required thereto, CUNA denies the allegations contained therein, denies that plaintiff has stated any valid causes of action and denies that plaintiff is entitled to any of the relief requested therein.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

CUNA has not been able to engage in sufficient discovery to learn all of the facts and circumstances relating to the matters described in plaintiff's Complaint and, therefore, requests the Court to permit CUNA to amend its answer and assert additional affirmative defenses or amend their affirmative defenses, once discovery has been completed.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state a cause of action against CUNA upon which relief can be granted, and should therefore be dismissed pursuant to Idaho Rules of Civil Procedure 12(b)(6).

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred under the doctrines of laches, waivers, estoppel and/or unclean hands under the circumstances asserted in plaintiff's Complaint.

#### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiff failed to reasonably mitigate his damages, if any. His right to recover, if any, is thereby reduced or barred.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to recovery or any benefits under the terms of the insurance policy issued in this case.

**SIXTH AFFIRMATIVE DEFENSE**

Some or all of plaintiff's claims are barred by plaintiff's contributory or comparative negligence.

**SEVENTH AFFIRMATIVE DEFENSE**

If collateral source payments were made, plaintiff's recovery, if any, is limited by I.C. § 6-1606, prohibiting the double recovery from collateral sources.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claim for noneconomic damages, if any, is limited by I.C. §§ 6-1603 & -1604.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claim for breach of good faith and fair dealing is barred by the plaintiff's breach of contract claim.

**ATTORNEY FEES**

In order to defend this action, defendant CUNA has been required to retain the services of Hall, Farley, Oberrecht & Blanton, P.A., and is entitled to recover its attorney fees and costs incurred herein, pursuant to Idaho Code §§ 12-121 and 12-123, Idaho Rule of Civil Procedure 54, and any other applicable statute, rule, or regulation.

**WHEREFORE**, defendant CUNA prays for judgment as follows:

1. That plaintiff's Complaint be dismissed with prejudice and that plaintiff take nothing thereunder;

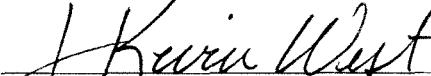
2. That defendant CUNA be awarded its costs and reasonable attorney fees incurred in this action; and

3. For such other and further relief as the Court deems just and equitable.

DATED this 31 day of October, 2008.

HALL, FARLEY, OBERRECHT  
& BLANTON, P.A.

By



J. Kevin West - Of the Firm

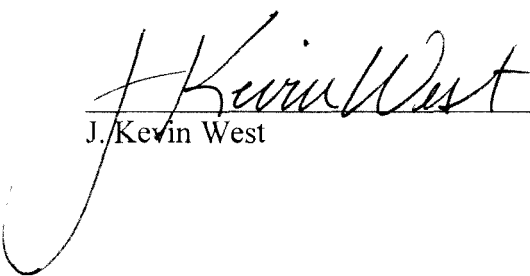
Attorneys for Defendant CUNA Mutual Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31 day of October, 2008, I caused to be served a true copy of the foregoing ANSWER TO COMPLAINT AND DEMAND FOR JURY TRIAL, by the method indicated below, and addressed to each of the following:

Thomas G. Maile, IV  
Attorney at Law  
380 West State Street  
Eagle, Idaho 83616

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

  
J. Kevin West

DEC 11 2008

J. DAVID NAVARRO, Clerk  
By J. WEATHERBY  
D.C.F.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ESTATE OF JUDY DEMOULIN, et al,

Plaintiffs,

vs.

CUNA MUTUAL GROUP,

Defendant.

Case No. CV OC 08-18710

ORDER GOVERNING PROCEEDINGS  
AND SETTING TRIAL

1. The stipulation for scheduling and planning signed by all parties is hereby approved and adopted as the Order of this Court pursuant to I.R.C.P 16(b). No party may vary from the stipulation of this order without approval of the Court.

2. Trial is set for a **Jury Trial** to commence on **January 19, 2010 at 9:00 a.m.** for 4 days. The Jury will be drawn at 2:30 p.m. the afternoon before trial in chambers. You may observe if you wish.

**NOTICE OF INTENT TO RELY ON PANEL OF JUDGES AS ALTERNATES**

Notice is hereby given, pursuant to I.C.R.P. 40(g) that an alternate judge may be assigned to preside over the trial of this case. The following is a list of potential alternate judges:

Hon. Phillip M. Becker  
Hon. G.D. Carey  
Hon. Dennis Goff  
Hon. George R. Reinhart, III  
Hon. Ronald Schilling  
Hon W. H. Woodland

Hon. James Judd  
Hon. Duff McKee  
Hon. Daniel Meehl  
Hon. Daniel C. Hurlbutt, Jr.  
Hon. Nathan Higer  
Hon. Linda Copple-Trout

Unless a party has previously exercised their right to disqualification without cause under Rule 40(d)(1), each party shall have the right to file one (1) motion for disqualification without cause as to any alternate judge not later than ten (10) days after service of this written notice listing the alternate judge.

3. A **pretrial conference** will be held on **December 17, 2009 at 4:30 p.m.**

4. Any party who does not intend to oppose a motion shall immediately notify opposing counsel and the court by filing a pleading titled "Non-Opposition to Motion." The moving party shall serve and file with affidavits or other documentary evidence, upon which the moving party intends to rely with the motion. Each motion, other than routine or uncontested matters, shall be accompanied by a separate brief containing all the reasons and points and authorities relied upon by the moving party. Before scheduling a hearing for a motion for summary judgment, file the motion and the memorandum in support. The Court will schedule the hearing and issue a scheduling order after reviewing the motion and supporting memorandum. All parties shall supply two (2) additional courtesy copies of all motions and supporting memoranda to chambers. Unless otherwise stated, any deadlines for filing Motions and Motions to Amend stipulated to by the parties apply to Motions to Amend to add a Claim for Punitive Damages. All memoranda must comply with the local rules. See **Local Rule 8. In no event may the parties agree to schedule dispositive motions to be heard within 2 months of trial.**

5. All parties must be represented at the pretrial conference. Counsel must be the handling attorney, or be fully familiar with the case and have authority to bind the client and law firm to all matters within I.R.C.P. 16. In addition to the requirements of I.R.C.P. 16(c), (d) and (e), at the pretrial conference, each party shall be required to serve on all other parties and lodge with the Court a complete list of exhibits and witnesses in accordance with I.R.C.P. 16(h). Parties shall submit to the Court, no later than five (5) days before the final pre-trial conference, a Pre-Trial Memoranda which will include the following:

- a. Elements of Plaintiff's case (Plaintiff);
- b. Defenses of Defendant's case (Defendant)
- c. Contested facts;
- d. Contested issues of law;
- e. Evidentiary issues
- f. Agreed or stipulated facts; and
- g. Memorandum of Points and Authorities on issues of law.

6. Exhibits should be pre-marked prior to opening of court. All approved videotape or audiotape presentations must be cued in advance, and all equipment tested for sound, picture, etc. prior to presenting evidence contained therein. The parties are responsible for reviewing proposed exhibits for redactions to ensure that objectionable material is not seen by the jury. "Dry runs" are encouraged before coming to court, and before court begins. All exhibits are to be handed to the court officer, instead of the witness.

7. Counsel should be familiar with the local rules, including the page limitations and argument limitations.

8. In the case of a jury trial, Proposed jury instructions must be submitted by the pre-trial conference with copies to opposing counsel. However contrary to I.R.C.P 51, if counsel requests standard Idaho Civil Jury Instructions (IDJI), counsel should only submit a captioned document listing the requested instructions by number. Counsel need not comply with the requirements of I.R.C.P 51 (a)(1) and submit the actual instructions with duplicates. If counsel requests modified instructions, counsel should submit only one copy of those requested instructions, as modified, clearly identifying the source upon which counsel relies for the instruction.

Dated this 11th day of December, 2008.



CHERI C. COPSEY  
District Judge

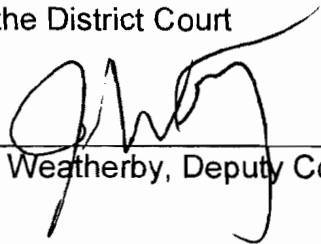
**CERTIFICATE OF MAILING**

I hereby certify that on this 11th day of December, 2008, I mailed (served) a true and correct copy of the within instrument to:

THOMAS G. MAILE  
ATTORNEY AT LAW  
380 W STATE ST  
EAGLE, ID 83616

J. KEVIN WEST  
HALL, FARLEY, OBERRECHT & BLANTON  
PO BOX 1271  
BOISE, ID 83701

J. DAVID NAVARRO  
Clerk of the District Court

By:   
John Weatherby, Deputy Court Clerk



THOMAS G. MAILE, IV  
Attorney at Law  
380 West State Street  
Eagle, Idaho 83616  
Telephone: (208) 939-1000  
Idaho State Bar No. 2378

210  
JAN 23 2009  
J. DAVID H. ...  
By J. David H. ...  
2009

Attorney for THE ESTATE OF JUDY DUMOULIN, Deceased, by and through her Personal Representative and JOSEPH DUMOULIN, an individual

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
Deceased, by and through her Personal  
Representative and JOSEPH DUMOULIN,  
an individual.

Plaintiff,

vs.

CUNA Mutual Group, an Iowa corporation  
authorized by the State of Idaho, Department  
of Insurance, to transact business in the State  
of Idaho

Defendant.

Case No. CV OC 2008-18710

**NOTICE OF TAKING  
DEPOSITION DUCES TECUM OF  
CUSTODIAN OF RECORDS FOR  
WEST VALLEY MEDICAL  
CENTER**

**TO: CUSTODIAN OF RECORDS FOR WEST VALLEY MEDICAL CENTER**

PLEASE TAKE NOTICE that the Plaintiffs herein will take the testimony upon oral examination of Custodian of Records for West Valley Medical Center pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a notary public for the State of Idaho, on the 11th day of March, 2009, at 9:30 o'clock, a.m., mountain time, at the offices of West Valley Medical Center, 1717 Arlington St, Caldwell, Idaho. Oral examination will continue from time to time until completed, and you are hereby notified to appear and take part in the examination. You are further

**NOTICE OF TAKING DEPOSITION DUCES TECUM OF WEST VALLEY MEDICAL  
CENTER, CUSTODIAN OF RECORDS - Pg 1**

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required to bring with you the following information and materials:


1. Any and all medical records, reports, notes, letters, testing results, correspondence, files, of any nature, type or kind pertaining to Judy Dumoulin, from January 1, 2005 to the date of September, 15, 2008.
2. The ORIGINALS and/or copies of any statements of any kind, whether written, recorded, stenographically transcribed, oral or otherwise, from any person, including you, your agents, your insurance carrier, investigators or anyone acting on your behalf, which relate to the medical care of Judy Dumoulin from January 1, 2005 to the current date.
3. The ORIGINALS and/or copies of all medical records in your possession or control, including hospital records, charts, doctor logs, staff logs, memos, files, correspondence, x-rays, tests, results of tests, surgery reports, or any other records pertaining to medical services of any nature, type or kind relating to the hospitalization of Judy Dumoulin, from January 1, 2005 to the date of September, 15, 2008.
4. The ORIGINALS and/or copies of all medical charges, including medical bills from doctors, and/or other health care providers, pertaining to Judy Dumoulin, from January 1, 2005 to the date of September, 15, 2008.

#### **DEFINITION**

As used in this Notice of Deposition Duces Tecum, the term "document(s)" means any and all writings of any kind, including the originals and non-identical copies, whether different from the originals by reason of any notation made on such copies.

Plaintiff, by requesting this material to be provided at the deposition, is not waiving compliance with the Idaho Rules of Civil Procedure for production of the documents prior to the taking of the deposition. In lieu thereof you may elect to provide true and correct copies of the file properly certifying the authenticity of the same seven (7) days prior to the deposition setting.

DATED this 25 day of January, 2009.

  
\_\_\_\_\_  
THOMAS G. MAILE, IV  
Attorney for Plaintiffs

**NOTICE OF TAKING DEPOSITION DUCES TECUM OF CUSTODIAN OF RECORDS  
FOR ST. LUKE'S MEDICAL CENTER AND/OR MOUNTAIN STATES TUMOR  
INSTITUTE - Pg 2**

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### CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 28 day of January, 2009, I caused a true and correct copy of the foregoing (1) NOTICE OF TAKING DEPOSITION DUCES TECUM OF CUSTODIAN OF RECORDS FOR WEST VALLEY MEDICAL CENTER and (2) SUBPOENA DUCES TECUM FOR WEST VALLEY MEDICAL CENTER, to be delivered, addressed as follows:

J. Kevin West  
Hall, Farley, Oberrecht & Blanton, P.A.  
702 West Idaho Street, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701-1271  
Facsimile: (208)395-8585

☐ U.S. Mail,  
☐ Hand Delivery  
☒ Facsimile Transmission  
☐ Overnight Delivery

Burnham, Habel & Associates  
Post Office Box 835  
Boise, Idaho 83701  
Fax # (208) 345-6374

☐ U.S. Mail,  
☐ Hand Delivery  
☒ Facsimile Transmission  
☐ Overnight Delivery



THOMAS G. MAILE, IV.,  
Attorney for Plaintiffs

THOMAS G. MAILE, IV  
Attorney at Law  
380 West State Street  
Eagle, Idaho 83616  
Telephone: (208) 939-1000  
Idaho State Bar No. 2378

NO. 120 FILED P.M.

MAR 17 2009

J. DAVID NAVARRO, Clerk  
By A. LYKE  
DEPUTY

Attorney for THE ESTATE OF JUDY DUMOULIN, Deceased, by and through her Personal Representative and JOSEPH DUMOULIN, an individual

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
Deceased, by and through her Personal  
Representative and JOSEPH DUMOULIN,  
an individual.

Plaintiff,

vs.

CUNA Mutual Group, an Iowa corporation  
authorized by the State of Idaho, Department  
of Insurance, to transact business in the State  
of Idaho

Defendant.

Case No. CV OC 2008-18710

**CERTIFICATION TO COURT  
AND COUNSEL OF EXPERT  
WITNESSES**

COMES NOW, the Plaintiffs, by and through their counsel of record, Thomas G. Maile, IV,  
and submits to the Court and opposing counsel their Certification to Court and Counsel of Expert  
Witnesses in compliance with I.R.C.P., Rules 16(a) and 16(b), to-wit:

**EXPERT WITNESSES:**

Stephen J. Bekanich, M.D.  
Assistant Professor of Medicine  
609 7<sup>th</sup> Avenue  
Salt Lake City, Utah 84103

**CERTIFICATION TO COURT AND COUNSEL OF EXPERT WITNESSES - Pg 1**

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Substance of Testimony: Dr. Bekanich has reviewed the medical records for Mrs. Judy Dumoulin including those from her hospitalization from March 13<sup>th</sup> to March 17<sup>th</sup>, 2008 as well as her autopsy report from March 18<sup>th</sup>, 2008. He has also consulted with four Idaho physicians (Drs. Steven Lofgran, Dr. Scott Taylor, Dr. Wendy Siegersma, Saltzer Medical Group in Nampa, Idaho, Dr. Patricia Buersmeyer, Saltzer Medical Group in Nampa, Idaho) as to the standard of care regarding the evaluation and management of respiratory failure in the state of Idaho. He can conclude within a reasonable degree of medical certainty that Mrs. Judy Dumoulin's death was preventable and that the attending physicians and/or the hospital staff were negligent in the treatment of Mrs. Judy Dumoulin.

He will testify that Mrs. Dumoulin went to the emergency department (E.D.) with the chief complaint of dyspnea (shortness of breath). The patient had a multiple risk factors, evidenced by her medical history, which would predispose her to have a large variety of illnesses that could manifest as dyspnea. Her initial evaluation in the E.D. including her history, the abnormalities noted on physical examination, and concerning diagnostic studies all gave credence to a pathologic process occurring within her lungs. However the focus of the assessment and plan formulated by the admitting medical team gave little consideration to this. This was a missed opportunity for more diagnostic studies to be done as to find the cause of her dyspnea that eventually led to respiratory failure.

On March 15<sup>th</sup> it was recognized that her pulmonary disorder needed further attention and computed tomography (CT scan) of the chest was obtained. The radiologist reading this study stated that the lung parenchyma (lung tissue) was "profoundly" and "markedly" abnormal. Based on CT scan findings the radiologist felt as though an infectious process was the etiology along with other

potential pathologic processes that needed follow up. There is nothing in the medical records to demonstrate that these findings, which require timely evaluation and intervention, were addressed with appropriate priority.

At nine o'clock in the evening on the 15<sup>th</sup> the patient began demonstrating signs of respiratory failure. The respiratory rate is considered one of the "vital signs" and is used in part as a reflection of a patient's respiratory status. Her respiratory rate throughout her hospital stay was typically in the realm of twenty-some breaths per minute. At nine p.m. it dramatically increased to 48 breaths per minute. This is extremely high and is not compatible with life for an extended period of time.

Mrs. Dumoulin had an alarming respiratory rate for approximately 13 hours prior to her respiratory arrest. Initially this was not appropriately recognized (or acted on) by the nursing staff as a physician was not alerted to her condition until after 1:30 a.m. on March 16<sup>th</sup>. Once the physician was made aware of this appropriate action was not taken. Mrs. Dumoulin needed an emergent evaluation and management into what was assuredly impending respiratory doom. Had proper steps been taken Dr. Bekanich believes her outcome would have been extremely different. The autopsy report, which diagnosed her with a treatable condition, supports this view. Dr. Bekanich has reviewed pertinent hospital records and formed his opinion thereby and also relied upon his education and years of experience related to his individual expertise in the field of medicine. Dr. Bekanich has authored publications within the preceding ten years and he has not testified as an expert at trial or by deposition for both the Plaintiff and/or the Defendant within the preceding four years. That the curriculum vitae for Dr. Bekanich has been made available to opposing counsel in discovery. Dr. Bekanich's hourly rate is \$300.00 per hour for work that can be done in Salt Lake City, Utah. For work that requires leaving Salt Lake City, Utah, Dr. Bekanich's

charges \$2,000 per day plus expenses to provide testimony at trial and/or depositions.

DATED this 17th day of March, 2009.



THOMAS G. MAILE, IV  
Attorney for the Plaintiffs

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 17th day of March, 2009, I caused a true and correct copy of the foregoing CERTIFICATION TO COURT AND OPPOSING COUNSEL OF EXPERT WITNESSES delivered, addressed as follows:

J. Kevin West  
Hall, Farley, Oberrecht & Blanton, P.A.  
702 West Idaho Street, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701-1271  
Facsimile: (208)395-8585

( ) U. S. Mail  
(X) Facsimile Transmission  
( ) Hand Delivery  
( ) Overnight Delivery



THOMAS G. MAILE  
Attorney for the Plaintiffs

10  
AM 1134  
APR 24 2008  
J. DAVID HALL, P.A.  
BY APPOINTMENT

J. Kevin West, ISB #3337  
E-mail: [jkw@hallfarley.com](mailto:jkw@hallfarley.com)  
Sally J. Reynolds  
ISB #7353; [sjr@hallfarley.com](mailto:sjr@hallfarley.com)  
HALL, FARLEY, OBERRECHT & BLANTON, P.A.  
702 West Idaho, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701  
Telephone: (208) 395-8500  
Facsimile: (208) 395-8585  
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Attorneys for Defendant CUNA Mutual Group

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
Deceased, by and through her Personal  
Representative and JOSEPH DUMOULIN,  
an individual,

Plaintiff,

vs.

CUNA Mutual Group, an Iowa corporation  
authorized by the State of Idaho, Department  
of Insurance, to transact business in the State  
of Idaho,

Defendant.

Case No. CV OC 0818710

**MOTION FOR SUMMARY  
JUDGMENT**

COMES NOW defendant CUNA Mutual Group, by and through its counsel of record,  
Hall, Farley, Oberrecht & Blanton, P.A., and, pursuant to Idaho Rule of Civil Procedure 56,  
hereby moves this Court for an order granting Summary Judgment. This motion is supported by

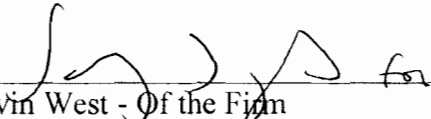
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the accompanying Memorandum in Support of Motion for Summary Judgment and the Affidavit of Counsel filed contemporaneously herewith. Oral argument is requested on this motion.

DATED this 20<sup>th</sup> day of April, 2009.

HALL, FARLEY, OBERRECHT  
& BLANTON, P.A.


By   
J. Kevin West - Of the Firm  
Attorneys for Defendant CUNA Mutual Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20<sup>th</sup> day of April, 2009, I caused to be served a true copy of the foregoing MOTION FOR SUMMARY JUDGMENT, by the method indicated below, and addressed to each of the following:

Thomas G. Maile, IV  
Attorney at Law  
380 West State Street  
Eagle, Idaho 83616

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy  
Telecopy

  
J. Kevin West

APR 30 2009

J. DAVID NAVARRO, Clerk  
By J. WEATHERBY  
DEPUTY

THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN *et al.*

Plaintiff,

Case No. CV-OC-2008-18710

vs.

SCHEDULING ORDER

CUNA MUTUAL GROUP

Defendant.

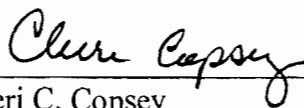
The Court has set CUNA Mutual Group's Motion for Summary Judgment for hearing on **July 9, 2009, at 3:00 p.m.** Pursuant to the Court's authority under I.R.C.P. 7(b)(3), the following schedule shall apply:

- a. Any party opposing the Motion for Summary Judgment shall file any opposing affidavits and answering brief by **May 15, 2009.** **THE BRIEF AND ANY ATTACHMENTS OR AFFIDAVITS MUST BE HAND DELIVERED TO THE COURT CHAMBERS BY THE CLOSE OF BUSINESS WITH 2 COURTESY COPIES OF ALL MATERIAL.**
- b. The Defendant, shall file any reply brief or affidavits by **June 1, 2009.** **THE BRIEF AND ANY ATTACHMENTS OR AFFIDAVITS MUST BE HAND DELIVERED TO THE COURT CHAMBERS BY THE CLOSE OF BUSINESS WITH 2 COURTESY COPIES OF ALL MATERIAL.**

The parties shall comply with the local rules.

IT IS SO ORDERED.

Dated this 29<sup>th</sup> day of April 2009.

  
Cheri C. Copsey  
District Judge

1  
2  
3 **CERTIFICATE OF MAILING**

4 I hereby certify that on this 30 day of April 2009, I mailed (served) a true and correct  
5 copy of the within instrument to:

6  
7 J. KEVIN WEST  
8 HALL, FARLEY, OBERRECHT & BLANTON, P.A.  
9 P.O. BOX 1271  
BOISE, IDAHO 83701

10  
11 THOMAS MAILE, IV  
12 380 WEST STATE STREET  
13 EAGLE, IDAHO 83616

14  
15 J. DAVID NAVARRO  
16 Clerk of the District Court

17  
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19 John Weatherby  
20 Deputy Clerk  
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NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 5

JUN 01 2009

J. DAVID NAVARRO, Clerk  
By E. HOLMES  
DEPUTY

J. Kevin West, ISB #3337  
E-mail: [jkw@hallfarley.com](mailto:jkw@hallfarley.com)  
Sally J. Reynolds  
ISB #7353; [sjr@hallfarley.com](mailto:sjr@hallfarley.com)  
HALL, FARLEY, OBERRECHT & BLANTON, P.A.  
702 West Idaho, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701  
Telephone: (208) 395-8500  
Facsimile: (208) 395-8585  
W:\11-580.25\Strike Mtn.doc

Attorneys for Defendant CUNA Mutual Group

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
Deceased, by and through her Personal  
Representative and JOSEPH DUMOULIN, an  
individual,

Plaintiff,

vs.

CUNA Mutual Group, an Iowa corporation  
authorized by the State of Idaho, Department  
of Insurance, to transact business in the State  
of Idaho,

Defendant.

Case No. CV OC 0818710

**MOTION TO STRIKE PORTIONS  
OF THE AFFIDAVITS OF JOSEPH  
DUMOULIN AND SHERI ARNOLD**

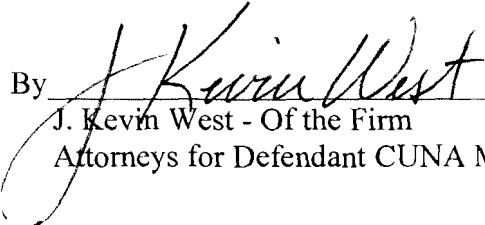
COMES NOW defendant CUNA Mutual Group, by and through its counsel of record,  
and moves this Court, pursuant to Idaho Rules of Civil Procedure 12(f) and 56(e), for an order

striking paragraphs 5-9 of the Affidavit of Joseph Dumoulin dated May 5, 2009, and paragraphs 3-5 of the Affidavit of Sheri Arnold dated May 7, 2009, submitted in support of the Memorandum Brief in Opposition to Defendant's Motion for Summary Judgment. This Motion is based upon the accompanying memorandum and upon all matters of record herein.

DATED this 1 day of June, 2009.

HALL, FARLEY, OBERRECHT  
& BLANTON, P.A.

By

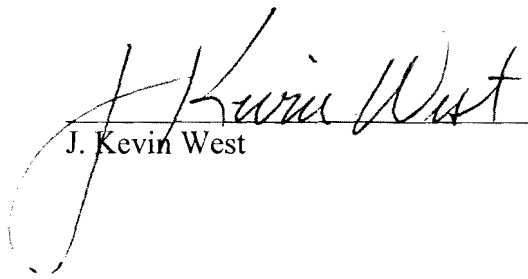
  
J. Kevin West - Of the Firm  
Attorneys for Defendant CUNA Mutual Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1 day of June, 2009, I caused to be served a true copy of the foregoing **MOTION TO STRIKE AFFIDAVITS OF JOSEPH DUMOULIN AND SHERI ARNOLD**, by the method indicated below, and addressed to each of the following:

Thomas G. Maile, IV  
Attorney at Law  
380 West State Street  
Eagle, Idaho 83616

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

  
J. Kevin West

NO. \_\_\_\_\_  
FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 432

JUN 02 2009

J. DAVID NAVARRO, Clerk  
By A. GARDEN  
DEPUTY

J. Kevin West, ISB #3337  
E-mail: [jkw@hallfarley.com](mailto:jkw@hallfarley.com)  
Sally J. Reynolds  
ISB #7353; [sjr@hallfarley.com](mailto:sjr@hallfarley.com)  
HALL, FARLEY, OBERRECHT & BLANTON, P.A.  
702 West Idaho, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701  
Telephone: (208) 395-8500  
Facsimile: (208) 395-8585  
W:\1\1-580.25\NOH - Motion to Strike - Amended.doc

Attorneys for Defendant CUNA Mutual Group

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
Deceased, by and through her Personal  
Representative and JOSEPH DUMOULIN,  
an individual,

Plaintiff,

vs.

CUNA Mutual Group, an Iowa corporation  
authorized by the State of Idaho, Department  
of Insurance, to transact business in the State  
of Idaho,

Defendant.

Case No. CV OC 0818710

**AMENDED NOTICE OF HEARING**

YOU WILL PLEASE TAKE NOTICE that the defendant, CUNA Mutual Group, by and through its attorneys of record, Hall, Farley, Oberrecht & Blanton, P.A., will bring on for hearing the Motion to Strike Portions of the Affidavits of Joseph Dumoulin and Sheri Arnold before the

above-entitled Court on **July** 9, 2009, at 3:00 p.m., at the United States District Court in Boise, Idaho, before the Honorable Cheri C. Copsey.

DATED this 2<sup>nd</sup> day of June, 2009.

HALL, FARLEY, OBERRECHT  
& BLANTON, P.A.

By J. Kevin West Of the Firm  
Attorneys for Defendant CUNA Mutual Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2<sup>nd</sup> day of June, 2009, I caused to be served a true copy of the foregoing AMENDED NOTICE OF HEARING, by the method indicated below, and addressed to each of the following:

Thomas G. Maile, IV  
Attorney at Law  
380 West State Street  
Eagle, Idaho 83616

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

J. Kevin West

NO. 9:20 FILED  
A.M. 9:20 P.M.

JUN 05 2003

J. DAVID NAVARRO, Clerk  
By KATHY J. BIEHL  
DEPUTY

Attorney for THE ESTATE OF JUDY DUMOULIN, Deceased, by and through her Personal Representative and JOSEPH DUMOULIN, an individual

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
Deceased, by and through her Personal  
Representative and JOSEPH DUMOULIN,  
an individual.

Plaintiff,

VS.

CUNA Mutual Group, an Iowa corporation  
authorized by the State of Idaho, Department  
of Insurance, to transact business in the State  
of Idaho

Defendant.

Case No. CV OC 2008-18710

**NOTICE OF TAKING  
DEPOSITION DUCES TECUM OF  
SHARON E. CARSWELL, MD**

**TO: SHARON E. CARSWELL, MD**

PLEASE TAKE NOTICE that the Plaintiffs herein will take the testimony upon oral examination of Sharon E. Carswell, MD pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a notary public for the State of Idaho, on the 6th day of August, 2009, at 1:00 o'clock, p.m., Mountain Time, at the offices of West Valley Medical Center, 1717 Arlington St, Caldwell, Idaho. Oral examination will continue from time to time until completed, and you are hereby notified to appear and take part in the examination. You are further required to bring with you the following

**NOTICE OF TAKING DEPOSITION DUCES TECUM OF SHARON E. CARSWELL, MD - Pg 1**

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information and materials:


1. Any and all personal notes and/or notations, medical records, reports, letters, testing results, prescription records, personal correspondence, documents of any nature, type or kind pertaining to Judy Dumoulin, from March 13, 2008 to the present date.

**DEFINITION**

As used in this Notice of Deposition Duces Tecum, the term "document(s)" means any and all writings of any kind, including the originals and non-identical copies, whether different from the originals by reason of any notation made on such copies.

Plaintiff, by requesting this material to be provided at the deposition, is not waiving compliance with the Idaho Rules of Civil Procedure for production of the documents prior to the taking of the deposition.

DATED this 11 day of June, 2009.

  
\_\_\_\_\_  
THOMAS G. MAILE, IV  
Attorney for Plaintiffs

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 4 day of June, 2009, I caused a true and correct copy of the foregoing (1) NOTICE OF TAKING DEPOSITION DUCES TECUM OF SHARON E. CARSWELL, MD and (2) SUBPOENA DUCES TECUM FOR SHARON E. CARSWELL, MD, to be delivered, addressed as follows:

J. Kevin West  
Hall, Farley, Oberrecht & Blanton, P.A.  
702 West Idaho Street, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701-1271  
Facsimile: (208)395-8585

☐ U.S. Mail,  
☐ Hand Delivery  
☒ Facsimile Transmission  
☐ Overnight Delivery

Burnham, Habel & Associates  
Post Office Box 835  
Boise, Idaho 83701  
Fax # (208) 345-6374

☐ U.S. Mail,  
☐ Hand Delivery  
☒ Facsimile Transmission  
☐ Overnight Delivery



THOMAS G. MAILE, IV.,  
Attorney for Plaintiffs

THOMAS G. MAILE, IV  
Attorney at Law  
380 West State Street  
Eagle, Idaho 83616  
Telephone: (208) 939-1000  
Idaho State Bar No. 2378

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. 9:20 P.M. \_\_\_\_\_

JUN 05 2009

J. DAVID NAVARRO, Clerk  
By KATHY J. BIEHL  
DEPUTY

Attorney for THE ESTATE OF JUDY DUMOULIN, Deceased, by and through her Personal Representative and JOSEPH DUMOULIN, an individual

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
Deceased, by and through her Personal  
Representative and JOSEPH DUMOULIN,  
an individual.

Plaintiff,

vs.

CUNA Mutual Group, an Iowa corporation  
authorized by the State of Idaho, Department  
of Insurance, to transact business in the State  
of Idaho

Defendant.

Case No. CV OC 2008-18710

**NOTICE OF TAKING  
DEPOSITION DUCES TECUM OF  
VANESSA L. ROOD, RN**

**TO: VANESSA L. ROOD, RN**

PLEASE TAKE NOTICE that the Plaintiffs herein will take the testimony upon oral examination of Vanessa L. Rood, RN pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a notary public for the State of Idaho, on the 6th day of August, 2009, at 10:00 o'clock, a.m., Mountain Time, at the offices of West Valley Medical Center, 1717 Arlington St, Caldwell, Idaho. Oral examination will continue from time to time until completed, and you are hereby notified to appear and take part in the examination. You are further required to bring with you the following

**NOTICE OF TAKING DEPOSITION DUCES TECUM OF VANESSA L. ROOD, RN - Pg**

1 Z:\server1\files\AD\JUDY DUMOULIN JOSEPH DUMOULIN INSURANCE CLAIM\CUNA\vanessarood.deposition.wpd

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information and materials:

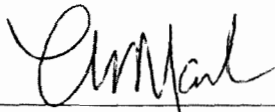
1. Any and all personal notes and/or notations, medical records, reports, letters, testing results, prescription records, personal correspondence, documents of any nature, type or kind pertaining to Judy Dumoulin, from March 13, 2008 to the present date.

**DEFINITION**

As used in this Notice of Deposition Duces Tecum, the term "document(s)" means any and all writings of any kind, including the originals and non-identical copies, whether different from the originals by reason of any notation made on such copies.

Plaintiff, by requesting this material to be provided at the deposition, is not waiving compliance with the Idaho Rules of Civil Procedure for production of the documents prior to the taking of the deposition.

DATED this 4 day of June, 2009.



---

THOMAS G. MAILE, IV  
Attorney for Plaintiffs

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 4 day of June, 2009, I caused a true and correct copy of the foregoing (1) NOTICE OF TAKING DEPOSITION DUCES TECUM OF VANESSA L. ROOD, RN and (2) SUBPOENA DUCES TECUM FOR VANESSA L. ROOD, RN, to be delivered, addressed as follows:

J. Kevin West	( )	U.S. Mail,
Hall, Farley, Oberrecht & Blanton, P.A.	( )	Hand Delivery
702 West Idaho Street, Suite 700	(X)	Facsimile Transmission
Post Office Box 1271	( )	Overnight Delivery
Boise, Idaho 83701-1271		
Facsimile: (208)395-8585		

Burnham, Habel & Associates	( )	U.S. Mail,
Post Office Box 835	( )	Hand Delivery
Boise, Idaho 83701	(X)	Facsimile Transmission
Fax # (208) 345-6374	( )	Overnight Delivery



---

THOMAS G. MAILE, IV.,  
Attorney for Plaintiffs

THOMAS G. MAILE, IV  
Attorney at Law  
380 West State Street  
Eagle, Idaho 83616  
Telephone: (208) 939-1000  
Idaho State Bar No. 2378

NO. \_\_\_\_\_  
A.M. 9:20 FILED P.M. \_\_\_\_\_

JUN 05 2009

J. DAVID NAVARRO, Clerk  
By KATHY J. BIEHL  
DEPUTY

Attorney for THE ESTATE OF JUDY DUMOULIN, Deceased, by and through her Personal Representative and JOSEPH DUMOULIN, an individual

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
Deceased, by and through her Personal  
Representative and JOSEPH DUMOULIN,  
an individual.

Plaintiff,

vs.

CUNA Mutual Group, an Iowa corporation  
authorized by the State of Idaho, Department  
of Insurance, to transact business in the State  
of Idaho

Defendant.

Case No. CV OC 2008-18710

**MOTION TO CONTINUE  
SUMMARY JUDGMENT  
HEARING**

COMES NOW, the undersigned, Thomas G. Maile, IV, attorney of record for The Estate of Judy Dumoulin, Deceased, by and through her Personal Representative and Joseph Dumoulin, and hereby moves this Court for a continuance pursuant to Idaho Rules of Civil Procedure 56(c) and further pursuant to the Affidavit in Support of Motion to Continue Summary Judgment Hearing filed concurrently herewith, requesting this Court to reset the current hearing relating to the Defendant's Motion Summary Judgment based upon the facts and circumstances set forth in the Affidavit in

**MOTION TO CONTINUE SUMMARY JUDGMENT HEARING - Pg 1**

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Support of Motion to Continue Summary Judgment Hearing which is incorporated by reference herein as if set forth in full herein.

This Motion is based upon the Affidavit in Support of Motion to Continue Summary Judgment Hearing filed concurrently herewith and upon the file and record in this matter. Oral argument is requested.

DATED this 4 day of June, 2009.



THOMAS G. MAILE, IV., Attorney for Plaintiffs

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on 4 day of June, 2009, I caused a true and correct copy of the foregoing (1) MOTION TO CONTINUE SUMMARY JUDGMENT HEARING, (2) AFFIDAVIT IN SUPPORT OF MOTION TO CONTINUE SUMMARY JUDGMENT HEARING, and (3) NOTICE OF HEARING to be delivered, addressed as follows:

J. Kevin West  
Hall, Farley, Oberrecht & Blanton, P.A.  
702 West Idaho Street, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701-1271  
Facsimile: (208)395-8585

( ) U. S. Mail  
(X) Facsimile Transmission  
( ) Hand Delivery  
( ) Overnight Delivery



THOMAS G. MAILE, IV., Attorney for Plaintiffs

THOMAS G. MAILE, IV  
Attorney at Law  
380 West State Street  
Eagle, Idaho 83616  
Telephone: (208) 939-1000  
Idaho State Bar No. 2378

NO. 10-54 FILED  
AT PM

JUN 15 2009

J. DAVID NAVARRO, Clerk  
By J. HANDALL  
DEPUTY

Attorney for THE ESTATE OF JUDY DUMOULIN, Deceased, by and through her Personal Representative and JOSEPH DUMOULIN, an individual

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
Deceased, by and through her Personal  
Representative and JOSEPH DUMOULIN,  
an individual.

Plaintiff,

vs.

CUNA Mutual Group, an Iowa corporation  
authorized by the State of Idaho, Department  
of Insurance, to transact business in the State  
of Idaho

Defendant.

Case No. CV OC 2008-18710

**NOTICE OF TAKING  
DEPOSITION DUCES TECUM OF  
VANESSA L. ROOD, RN**

**TO: VANESSA L. ROOD, RN**

PLEASE TAKE NOTICE that the Plaintiffs herein will take the testimony upon oral examination of Vanessa L. Rood, RN pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a notary public for the State of Idaho, on the 6th day of August, 2009, at 9:30 o'clock, a.m., Mountain Time, at the offices of Burnham Habel & Associates Inc., 6027 Clinton Street, Boise, Idaho. Oral examination will continue from time to time until completed, and you are hereby notified to appear and take part in the examination. You are further required to bring with you the following

**NOTICE OF TAKING DEPOSITION DUCES TECUM OF VANESSA L. ROOD, RN - Pg**



information and materials:


1. Any and all personal notes and/or notations, medical records, reports, letters, testing results, prescription records, personal correspondence, documents of any nature, type or kind pertaining to Judy Dumoulin, from March 13, 2008 to the present date.

**DEFINITION**

As used in this Notice of Deposition Duces Tecum, the term "document(s)" means any and all writings of any kind, including the originals and non-identical copies, whether different from the originals by reason of any notation made on such copies.

Plaintiff, by requesting this material to be provided at the deposition, is not waiving compliance with the Idaho Rules of Civil Procedure for production of the documents prior to the taking of the deposition.

DATED this 15 day of June, 2009.

  
THOMAS G. MAILE, IV  
Attorney for Plaintiffs

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 11 day of June, 2009, I caused a true and correct copy of the foregoing (1) NOTICE OF TAKING DEPOSITION DUCES TECUM OF VANESSA L. ROOD, RN and (2) SUBPOENA DUCES TECUM FOR VANESSA L. ROOD, RN, to be delivered, addressed as follows:

J. Kevin West  
Hall, Farley, Oberrecht & Blanton, P.A.  
702 West Idaho Street, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701-1271  
Facsimile: (208)395-8585

( ) U.S. Mail,  
( ) Hand Delivery  
(X) Facsimile Transmission  
( ) Overnight Delivery

Burnham, Habel & Associates  
Post Office Box 835  
Boise, Idaho 83701  
Fax # (208) 345-6374

( ) U.S. Mail,  
( ) Hand Delivery  
(X) Facsimile Transmission  
( ) Overnight Delivery



THOMAS G. MAILE, IV.,  
Attorney for Plaintiffs

THOMAS G. MAILE, IV  
Attorney at Law  
380 West State Street  
Eagle, Idaho 83616  
Telephone: (208) 939-1000  
Idaho State Bar No. 2378

NO. \_\_\_\_\_ FILED  
A.M. 10:56 P.M.

JUN 15 2009

J. DAVID NAVARRO, Clerk  
By J. RANDALL  
DEPUTY

Attorney for THE ESTATE OF JUDY DUMOULIN, Deceased, by and through her Personal Representative and JOSEPH DUMOULIN, an individual

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
Deceased, by and through her Personal  
Representative and JOSEPH DUMOULIN,  
an individual.

Plaintiff,

vs.

CUNA Mutual Group, an Iowa corporation  
authorized by the State of Idaho, Department  
of Insurance, to transact business in the State  
of Idaho

Defendant.

Case No. CV OC 2008-18710

**AMENDED NOTICE OF HEARING**

**TO: DEFENDANT AND IT'S COUNSEL OF RECORD**

YOU WILL PLEASE TAKE NOTICE that on the 25th day of June, 2009, at the hour of 2:00 o'clock, p.m., or as soon thereafter as counsel may be heard, the Estate of Judy Dumoulin, Deceased, by and through her Personal Representative and Joseph Dumoulin, an individual, by and through their counsel of record, Thomas G. Maile, IV., will call up for hearing their Motion to Continue Summary Judgment Hearing at the Ada County Courthouse.

DATED this 10<sup>th</sup> day of June, 2009.



THOMAS G. MAILE, IV.,  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That on 10<sup>th</sup> day of June, 2009, I caused a true and correct copy of the foregoing AMENDED NOTICE OF HEARING to be delivered, addressed as follows:

J. Kevin West  
Hall, Farley, Oberrecht & Blanton, P.A.  
702 West Idaho Street, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701-1271  
Facsimile: (208)395-8585

( ) U. S. Mail  
(X) Facsimile Transmission  
( ) Hand Delivery  
( ) Overnight Delivery



THOMAS G. MAILE, IV.,  
Attorney for Plaintiffs

JUN 25 2009

THOMAS G. MAILE, IV  
Attorney at Law  
380 West State Street  
Eagle, Idaho 83616  
Telephone: (208) 939-1000  
Idaho State Bar No. 2378

J. DAVID NAVARRO, Clerk  
By PATRICIA A DWONCH  
DEPUTY

Attorney for THE ESTATE OF JUDY DUMOULIN, Deceased, by and through her Personal Representative and JOSEPH DUMOULIN, an individual

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
Deceased, by and through her Personal  
Representative and JOSEPH DUMOULIN,  
an individual.

Plaintiff,

vs.

CUNA Mutual Group, an Iowa corporation  
authorized by the State of Idaho, Department  
of Insurance, to transact business in the State  
of Idaho

Defendant.

Case No. CV OC 2008-18710

**AMENDED NOTICE OF TAKING  
DEPOSITION DUCES TECUM OF  
VANESSA L. ROOD, RN**

**TO: VANESSA L. ROOD, RN**

PLEASE TAKE NOTICE that the Plaintiffs herein will take the testimony upon oral examination of Vanessa L. Rood, RN pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a notary public for the State of Idaho, on the 17th day of August, 2009, at 9:30 o'clock, a.m., Mountain Time, at the offices of Burnham Habel & Associates Inc., 6027 Clinton Street, Boise, Idaho. Oral examination will continue from time to time until completed, and you are hereby notified to appear and take part in the examination. You are further required to bring with you the following

**AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM OF VANESSA L.  
ROOD, RN - Pg 1**

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00064

information and materials:

1. Any and all personal notes and/or notations, medical records, reports, letters, testing results, prescription records, personal correspondence, documents of any nature, type or kind pertaining to Judy Dumoulin, from March 13, 2008 to the present date.

**DEFINITION**

As used in this Notice of Deposition Duces Tecum, the term "document(s)" means any and all writings of any kind, including the originals and non-identical copies, whether different from the originals by reason of any notation made on such copies.

Plaintiff, by requesting this material to be provided at the deposition, is not waiving compliance with the Idaho Rules of Civil Procedure for production of the documents prior to the taking of the deposition.

DATED this 17 day of June, 2009.

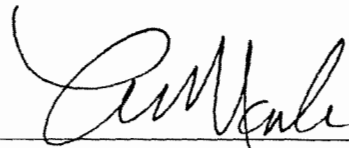
  
\_\_\_\_\_  
THOMAS G. MAILE, IV  
Attorney for Plaintiffs

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 17 day of June, 2009, I caused a true and correct copy of the foregoing (1) AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM OF VANESSA L. ROOD, RN and (2) AMENDED SUBPOENA DUCES TECUM FOR VANESSA L. ROOD, RN, to be delivered, addressed as follows:

J. Kevin West	( ) U.S. Mail,
Hall, Farley, Oberrecht & Blanton, P.A.	( ) Hand Delivery
702 West Idaho Street, Suite 700	(X) Facsimile Transmission
Post Office Box 1271	( ) Overnight Delivery
Boise, Idaho 83701-1271	
Facsimile: (208)395-8585	

Burnham, Habel & Associates	( ) U.S. Mail,
Post Office Box 835	( ) Hand Delivery
Boise, Idaho 83701	(X) Facsimile Transmission
Fax # (208) 345-6374	( ) Overnight Delivery



THOMAS G. MAILE, IV.,  
Attorney for Plaintiffs

RECEIVED  
JUN 29 2009  
Ada County Clerk

ORIGINAL

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. 11 P.M. \_\_\_\_\_

JUL 08 2009

J. DAVID NAVARRO, Clerk  
By J. WEATHERBY  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
Deceased, by and through her Personal  
Representative and JOSEPH DUMOULIN,  
an individual,

Plaintiff,

vs.

CUNA Mutual Group, an Iowa corporation  
authorized by the State of Idaho, Department  
of Insurance, to transact business in the State  
of Idaho,

Defendant.

Case No. CV OC 0818710

**ORDER DENYING PLAINTIFF'S  
MOTION TO CONTINUE  
SUMMARY JUDGMENT HEARING**

Plaintiff's Motion to Continue Summary Judgment Hearing having come before the Court on June 25, 2009, the Court having reviewed the pleadings and files on record herein and the briefs of the parties, and good cause appearing therefore;

IT IS HEREBY ORDERED that Plaintiff's Motion to Continue Summary Judgment Hearing is DENIED.

DATED this 7<sup>th</sup> day of July 2009.

By Cheri C. Copsey  
Honorable Cheri C. Copsey  
District Court Judge, Ada County



CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8 day of July 2009, I caused to be served a true copy of the foregoing **ORDER DENYING PLAINTIFF'S MOTION TO CONTINUE SUMMARY JUDGMENT HEARING**, by the method indicated below, and addressed to each of the following:

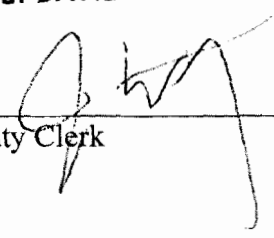
Thomas G. Maile, IV  
Attorney at Law  
380 West State Street  
Eagle, Idaho 83616

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

J. Kevin West  
Hall, Farley, Oberrecht & Blanton PA  
P.O. Box 1271  
Boise, Idaho 83701-1271

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
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J. DAVID NAVARRO

  
\_\_\_\_\_  
Deputy Clerk

JUL 17 2009

J. DAVID NAVARRO, Clerk  
By J. WEATHERBY  
DEPUTY

## THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN by  
and through her Personal Representative,  
and JOSEPH DUMOULIN

Plaintiffs,

vs.

CUNA MUTUAL GROUP.

Defendant.

Case No. CV-OC-2008-18710

ORDER GRANTING MOTION TO  
STRIKE

On June 25, 2009, the Court heard argument on the Plaintiff's Motion to Continue Summary Judgment Hearing and denied the Motion. CUNA Mutual Group had also moved to strike portions of Sheri Arnold's and Joseph Dumoulin's affidavits on June 1, 2009, and gave notice of hearing for July 9, 2009.<sup>1</sup> The Plaintiffs suggested the Court should hear this Motion at the hearing on their Motion to Continue. However, they did not actually respond to the Motion to Strike. During the June 25, 2009 hearing the Court opined that the majority of these two affidavits contained hearsay and speculation and were not based on personal knowledge. However, it did not expressly rule on the Motion to Strike.

At the summary judgment hearing held on July 16, 2009, the Court again failed to rule on the Motion to Strike.

The affidavits supporting or opposing a motion for summary judgment shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. *Rhodehous v. Stutts*, 125 Idaho 208, 868 P.2d 1224 (1994); I.R.C.P. 56(e). The requirements of Rule 56(e) are not satisfied by an affidavit that

---

<sup>1</sup> That hearing was continued to July 16, 2009.

1 is conclusory, based on hearsay, and not supported by personal knowledge. *State v. Shama*  
2 *Resources Limited Partnership*, 127 Idaho 267, 899 P.2d 977 (1995). Therefore, having fully  
3 reviewed the record and argument, the Court hereby grants the Motion to Strike portions of  
4 paragraphs 5-9 of Joseph Dumoulin's affidavit and paragraph 3 of Sheri Arnold's affidavit  
5 finding as follows:

6 Joseph Dumoulin Affidavit -- Paragraphs 5 and 6 -- The statements made in these  
7 paragraphs contain inadmissible hearsay concerning what Mr. Dumoulin was told  
8 by hospital staff and are therefore stricken.

9 Joseph Dumoulin Affidavit -- Paragraph 7 -- The statements "Your affiant's wife  
10 prior to her hospitalization never had any experience with oxygen lines being used  
11 for her well being" and "lack of oxygen caused her death" are speculative and lack  
12 foundation. Mr. Dumoulin's opinion regarding the cause of death is inadmissible  
13 because he is not qualified to testify as to cause of death. They are stricken.

14 Joseph Dumoulin Affidavit -- Paragraph 8 -- The statement "that your affiant's  
15 wife was not supervised in the shower and was obviously not using her oxygen  
16 when she passed out due to lack of oxygen while she was attempting to check out  
17 of the hospital" is inadmissible. There is no indication that Mr. Dumoulin can  
18 testify to any of this based on personal knowledge.

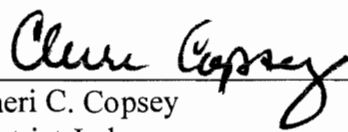
19 Joseph Dumoulin Affidavit -- Paragraph 9 -- The statements "that the failure to  
20 take her oxygen into the shower resulting in her death was unexpected or  
21 unforeseen. That based upon you affiant's observations of his wife for the seven  
22 years she was on psychotropic medications, she could not have know the  
23 repercussions of not taking her oxygen into a shower" are inadmissible. Mr.  
24 Dumoulin cannot have known what his wife knew and has no personal knowledge  
25 about how she died. He was not there. The statements are stricken.

26 Sheri Arnold Affidavit -- Paragraph 3 -- The statement "there was no course of  
27 treatment by the hospital and/or its staff but the staff repeatedly told your affiant, . .  
28 that your affiant's mother remained in the hospital for continued observation."  
29 There is no foundation for her statement regarding the course of treatment. The  
30 statements regarding what the staff told her are clearly hearsay and all of the  
31 statements are stricken.

32 As to the other statements CUNA requests the Court strike, the Court denies its Motion.

**IT IS SO ORDERED.**

Dated this 17<sup>th</sup> day of July 2009.

  
Cheri C. Copsey  
District Judge

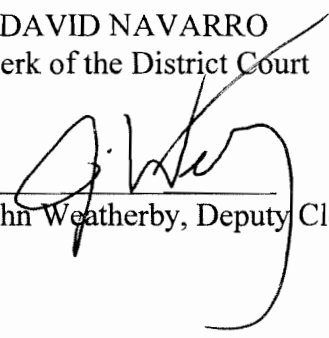
CERTIFICATE OF MAILING

I hereby certify that on this 17 day of July 2009, I mailed (served) a true and correct copy of the within instrument to:

THOMAS G. MAILE, IV  
380 WEST STATE STREET  
EAGLE, IDAHO 83616

SALLY J. REYNOLDS  
HALL, FARLEY, OBERRECHT & BLANTON, P.A.  
P.O. BOX 1271  
BOISE, IDAHO 83701

J. DAVID NAVARRO  
Clerk of the District Court

  
John Weatherby, Deputy Clerk

RECEIVED

JUL 20 2009

Ada County Clerk

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. 8:30 P.M. \_\_\_\_\_

JUL 22 2009

J. DAVID NAVARRO, Clerk  
By J. WEATHERBY  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
Deceased, by and through her Personal  
Representative and JOSEPH DUMOULIN,  
an individual,

Plaintiff,

vs.

CUNA Mutual Group, an Iowa corporation  
authorized by the State of Idaho, Department  
of Insurance, to transact business in the State  
of Idaho,

Defendant.

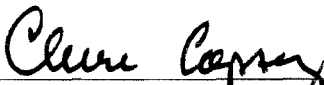
Case No. CV OC 0818710

**ORDER GRANTING SUMMARY  
JUDGMENT**

Defendant CUNA Mutual Group's Motion for Summary Judgment having come before this Court on July 16, 2009, and the Court having reviewed the pleadings on file herein, and having heard oral argument by counsel for the parties,

IT IS HEREBY ordered, in accordance with the Court's comments from the bench, that Defendant CUNA Mutual Group's Motion for Summary Judgment is hereby granted, and this case shall be dismissed in its entirety with prejudice. This Order incorporates by reference the Court's oral remarks at hearing.

DATED this 21<sup>st</sup> day of July, 2009.

  
Cheri C. Copsey, District Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22 day of July, 2009, I caused to be served a true copy of the foregoing ORDER GRANTING SUMMARY JUDGMENT, by the method indicated below, and addressed to each of the following:

Thomas G. Maile, IV  
Attorney at Law  
380 West State Street  
Eagle, Idaho 83616

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

J. Kevin West  
Sally J. Reynolds  
Hall, Farley, Oberrecht & Blanton, P.A.  
701 West Idaho, Suite 700  
P.O. Box 1271  
Boise, ID 83701-1271

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

**J. DAVID NAVARRO**

Deputy Clerk

ORIGINAL

RECEIVED  
JUL 27 2009  
Ada County Clerk

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 2:45

JUL 28 2009

J. DAVID NAVARRO, Clerk  
By J. WEATHERBY  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
Deceased, by and through her Personal  
Representative and JOSEPH DUMOULIN,  
an individual,

Plaintiff,

vs.

CUNA Mutual Group, an Iowa corporation  
authorized by the State of Idaho, Department  
of Insurance, to transact business in the State  
of Idaho,

Defendant.

Case No. CV OC 0818710

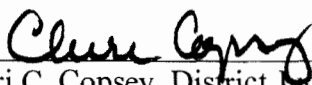
**JUDGMENT**

THIS MATTER having come before the Court on Defendant's Motion for Summary Judgment, and the Court having entered its Order Granting Summary Judgment on July 22, 2009,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint in this matter is dismissed with prejudice.

IT IS SO ORDERED.

DATED this 28<sup>th</sup> day of July, 2009.

  
Cheri C. Copsey, District Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29 day of July, 2009, I caused to be served a true copy of the foregoing JUDGMENT, by the method indicated below, and addressed to each of the following:

Thomas G. Maile, IV  
Attorney at Law  
380 West State Street  
Eagle, Idaho 83616

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

J. Kevin West  
Sally J. Reynolds  
Hall, Farley, Oberrecht & Blanton, P.A.  
701 West Idaho, Suite 700  
P.O. Box 1271  
Boise, ID 83701-1271

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Telecopy

J. DAVID HARRIS

Deputy Clerk



THOMAS G. MAILE, IV  
Attorney at Law  
380 West State Street  
Eagle, Idaho 83616  
Telephone: (208) 939-1000  
Idaho State Bar No. 2378

NOV 11 2 35 PM  
A.M. FILED

AUG 20 2009

J. DAVID NAVARRO, Clerk  
By PATRICIA A DWONCH  
DEPUTY

Attorney for THE ESTATE OF JUDY DUMOULIN, Deceased, by and through her Personal Representative and JOSEPH DUMOULIN, an individual

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
Deceased, by and through her Personal  
Representative and JOSEPH DUMOULIN,  
an individual.

Plaintiff,

vs.

CUNA Mutual Group, an Iowa corporation  
authorized by the State of Idaho, Department  
of Insurance, to transact business in the State  
of Idaho

Defendant.

Case No. CV OC 2008-18710

**NOTICE OF APPEAL**

**TO: THE DEFENDANT/RESPONDENT ABOVE NAMED, IT'S ATTORNEY OF  
RECORD, J. KEVIN WEST AND THE CLERK OF THE ABOVE-ENTITLED  
COURT**

NOTICE IS HEREBY GIVEN that the attorney above named, Plaintiffs-Appellants,  
Estate of Judy Dumoulin and Joseph Dumoulin, by and through Thomas G. Maile, IV., attorney  
for the Plaintiffs, hereinafter referred to as "Appellants", appeal against the above-named  
Respondents to the Supreme Court of the State of Idaho, from the Judgment entered on July 28,  
2009 in the above-entitled action by Honorable Cheri C. Copsey.

NOTICE OF APPEAL page 1

000'76

1. Appellants have a right to appeal to the Idaho Appellate Court, from the District Court of the Fourth Judicial District of the State of Idaho, In and For the County of Ada, and the Judgment entered July 28, 2009 is an appealable Order under and pursuant to Rule 11 of the I.A.R., in that there was a final Judgment entered on July 28, 2009 resolving all claims of the parties.

2. That the parties have a right to appeal to the Idaho Supreme Court, and the judgment described in paragraph 1 above is an appealable order under and pursuant to Rule 11(a)(2) I.A.R. That pursuant to the Idaho Appellate Rules, jurisdiction is proper for the appeal.

3. That no order been entered sealing all or any portion of the record.

4. A preliminary statement of the issues on appeal which the Appellants intend to assert in the appeal, are as follows:

- a. Was the District Court correct in entering the Order granting the Defendant-Respondent's Motion for Summary Judgment?
- b. Was the District Court correct in determining that the policy language excluded the Appellants' claims for benefits under the policy?
- c. Was the District Court correct in determining that the death of Judy Dumoulin was not an accident under the terms of the insurance policy?
- d. Was the District Court correct in determining that the exclusions under the insurance policy barred the plaintiffs from recovery pursuant to the insurance policy?

Is a reporter's transcript requested? Yes. The following transcript is requested, and the Appellants request the same to be made a part of the appeal as existing transcripts, to wit:

- a. Hearing dated July 16, 2009;

- b. The transcript is requested in standard format and not compressed.
- c. That the estimated fee for the preparation of the transcript has been paid.

That the Appellants have paid the estimated costs of the clerk's record.

- 5. The Appellants request the following documents to be included in the clerk's record:

PLEADINGS ASSOCIATED WITH ADA COUNTY CASE NO. CV OC 2008-1871

- 1 10/02/2008 Complaint;
- 2 10/31/2008 Answer;
- 3 12/08/2008 Scheduling Order;
- 4 01/28/2009 Notice Of Taking Deposition;
- 5 03/17/2009 Certification to Court of Expert Witnesses;
- 6 04/20/2009 Motion for Summary Judgment;
- 7 04/20/2009 Affidavit In Support Of Motion for Summary Judgment;
- 8 04/20/2009 Memorandum in Support for Motion for Summary Judgment;
- 9 04/30/2009 Scheduling Order;
- 10 05/12/2009 Affidavit of Stephen Bekanich RE: Motion for Summary Judgment;
- 11 05/12/2009 Affidavit of Thomas Maile in Opposition to Defendants Motion for Summary Judgment;
- 12 05/12/2009 Affidavit of Sheri Arnold in Opposition to Defendants Motion for Summary Judgment;
- 13 05/12/2009 Affidavit of Joseph Dumoulin in Opposition to Defendants Motion for Summary Judgment;

- 14 05/12/2009 Memorandum in Brief in Opposition to Motion for Summary Judgment;
- 15 06/01/2009 Motion to Strike Portions of the Affidavits of Joseph Dumoulin and Sheri Arnold;
- 16 06/01/2009 Memorandum in Support of Motion;
- 17 06/01/2009 Affidavit of Records Custodian Certifying Records;
- 18 06/01/2009 Reply Memorandum in Support of Cuna Mutuals Motion for Summary Judgment;
- 19 06/02/2009 Amended Notice of Hearing (07/09/09 @ 3:00pm);
- 20 06/05/2009 Notice Of Taking Deposition;
- 21 06/05/2009 Notice Of Taking Deposition;
- 22 06/05/2009 Motion to Continue Summary Judgment Hearing;
- 23 06/05/2009 Affidavit in Support of Motion;
- 24 06/15/2009 Notice Of Taking Deposition;
- 25 06/15/2009 Hearing Scheduled (Motion 06/25/2009 02:00 PM) Motion to Continue Summary Judgment Hearing;
- 26 06/17/2009 Memorandum in Opposition to Motion to Continue Summary Judgment Hearing;
- 27 06/17/2009 Affidavit of Counsel in Support of Opposition to Motion to Continue;
- 28 06/25/2009 Amended Notice of Taking Deposition Duces Tecum of Vanessa L Rood RN;

- 29 07/08/2009 Order Denying Plaintiff's Motion To Continue Summary Judgment  
Hearing;
- 30 07/17/2009 Order Granting Motion To Strike;
- 31 07/22/2009 Order Granting Summary Judgment;
- 32 07/28/2009 Judgment.

That service has been made upon all parties required to be served pursuant to Rule 20 I.A.R.

DATED this 19 day of August, 2009.



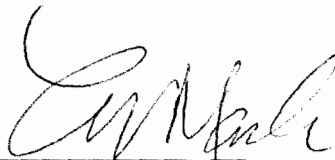
THOMAS MAILE, Counsel for Appellants

### **CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 19 day of August, 2009, I caused to be delivered a true and correct copy of the NOTICE OF APPEAL by depositing the same in the U.S. Mail, addressed as follows:

J. Kevin West & Sally Reynolds  
Hall, Farley, Oberrecht & Blanton, P.A.  
702 West Idaho Street, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701-1271  
Facsimile: (208) 395-8585

- ☐ U. S. Mail  
☒ Facsimile Transmission  
☐ Hand Delivery  
☐ Overnight Delivery



THOMAS MAILE, Counsel for Appellants

THOMAS G. MAILE, IV  
Attorney at Law  
380 West State Street  
Eagle, Idaho 83616  
Telephone: (208) 939-1000  
Idaho State Bar No. 2378

NO. \_\_\_\_\_  
FILED P.M. 8:30  
A.M. \_\_\_\_\_

AUG 31 2009

J. DAVID NAVARRO, Clerk  
By KATHY J. BIEHL  
DEPUTY

Attorney for THE ESTATE OF JUDY DUMOULIN, Deceased, by and through her Personal Representative and JOSEPH DUMOULIN, an individual

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
Deceased, by and through her Personal  
Representative and JOSEPH DUMOULIN,  
an individual.

Plaintiff,

vs.

CUNA Mutual Group, an Iowa corporation  
authorized by the State of Idaho, Department  
of Insurance, to transact business in the State  
of Idaho

Defendant.

Case No. CV OC 2008-18710

**AMENDED NOTICE OF APPEAL**

**TO: THE DEFENDANT/RESPONDENT ABOVE NAMED, IT'S ATTORNEY OF  
RECORD, J. KEVIN WEST AND THE CLERK OF THE ABOVE-ENTITLED  
COURT**

NOTICE IS HEREBY GIVEN that the attorney above named, Plaintiffs-Appellants,  
Estate of Judy Dumoulin and Joseph Dumoulin, by and through Thomas G. Maile, IV., attorney  
for the Plaintiffs, hereinafter referred to as "Appellants", appeal against the above-named  
Respondents to the Supreme Court of the State of Idaho, from the Judgment entered on July 28,  
2009 in the above-entitled action by Honorable Cheri C. Copsey.

AMENDED NOTICE OF APPEAL Page 1

00081

1. Appellants have a right to appeal to the Idaho Appellate Court, from the District Court of the Fourth Judicial District of the State of Idaho, In and For the County of Ada, and the Judgment entered July 28, 2009 is an appealable Order under and pursuant to Rule 11 of the I.A.R., in that there was a final Judgment entered on July 28, 2009 resolving all claims of the parties.

2. That the parties have a right to appeal to the Idaho Supreme Court, and the judgment described in paragraph 1 above is an appealable order under and pursuant to Rule 11(a)(2) I.A.R. That pursuant to the Idaho Appellate Rules, jurisdiction is proper for the appeal.

3. That no order been entered sealing all or any portion of the record.

4. A preliminary statement of the issues on appeal which the Appellants intend to assert in the appeal, are as follows:

- a. Was the District Court correct in entering the Order granting the Defendant-Respondent's Motion for Summary Judgment?
- b. Was the District Court correct in determining that the policy language excluded the Appellants' claims for benefits under the policy?
- c. Was the District Court correct in determining that the death of Judy Dumoulin was not an accident under the terms of the insurance policy?
- d. Was the District Court correct in determining that the exclusions under the insurance policy barred the plaintiffs from recovery pursuant to the insurance policy?

Is a reporter's transcript requested? Yes. The following transcript is requested, and the Appellants request the same to be made a part of the appeal as existing transcripts, to wit:

- a. Hearing dated July 16, 2009;

- b. The transcript is requested in standard format and not compressed.
- c. That the estimated fee for the preparation of the transcript has been paid.

That the Appellants have paid the estimated costs of the clerk's record.

- 5. The Appellants request the following documents to be included in the clerk's record:

PLEADINGS ASSOCIATED WITH ADA COUNTY CASE NO. CV OC 2008-1871

- 1 10/02/2008 Complaint;
- 2 10/31/2008 Answer;
- 3 12/08/2008 Scheduling Order;
- 4 01/28/2009 Notice Of Taking Deposition;
- 5 03/17/2009 Certification to Court of Expert Witnesses;
- 6 04/20/2009 Motion for Summary Judgment;
- 7 04/20/2009 Affidavit In Support Of Motion for Summary Judgment;
- 8 04/20/2009 Memorandum in Support for Motion for Summary Judgment;
- 9 04/30/2009 Scheduling Order;
- 10 05/12/2009 Affidavit of Stephen Bekanich RE: Motion for Summary Judgment;
- 11 05/12/2009 Affidavit of Thomas Maile in Opposition to Defendants Motion for  
Summary Judgment;
- 12 05/12/2009 Affidavit of Sheri Arnold in Opposition to Defendants Motion for  
Summary Judgment;
- 13 05/12/2009 Affidavit of Joseph Dumoulin in Opposition to Defendants Motion for  
Summary Judgment;



- 14 05/12/2009 Memorandum in Brief in Opposition to Motion for Summary Judgment;
- 15 06/01/2009 Motion to Strike Portions of the Affidavits of Joseph Dumoulin and Sheri Arnold;
- 16 06/01/2009 Memorandum in Support of Motion;
- 17 06/01/2009 Affidavit of Records Custodian Certifying Records;
- 18 06/01/2009 Reply Memorandum in Support of Cuna Mutuals Motion for Summary Judgment;
- 19 06/02/2009 Amended Notice of Hearing (07/09/09 @ 3:00pm);
- 20 06/05/2009 Notice Of Taking Deposition;
- 21 06/05/2009 Notice Of Taking Deposition;
- 22 06/05/2009 Motion to Continue Summary Judgment Hearing;
- 23 06/05/2009 Affidavit in Support of Motion;
- 24 06/15/2009 Notice Of Taking Deposition;
- 25 06/15/2009 Hearing Scheduled (Motion 06/25/2009 02:00 PM) Motion to Continue Summary Judgment Hearing;
- 26 06/17/2009 Memorandum in Opposition to Motion to Continue Summary Judgment Hearing;
- 27 06/17/2009 Affidavit of Counsel in Support of Opposition to Motion to Continue;
- 28 06/25/2009 Amended Notice of Taking Deposition Duces Tecum of Vanessa L Rood RN;

- 29 07/08/2009 Order Denying Plaintiff's Motion To Continue Summary Judgment  
Hearing;
- 30 07/17/2009 Order Granting Motion To Strike;
- 31 07/22/2009 Order Granting Summary Judgment;
- 32 07/28/2009 Judgment.

That service has been made upon all parties required to be served pursuant to Rule 20 I.A.R.

DATED this 31 day of August, 2009.



THOMAS MAILE, Counsel for Appellants

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 31 day of August, 2009, I caused to be delivered a true and correct copy of the NOTICE OF APPEAL by depositing the same in the U.S. Mail, addressed as follows:

J. Kevin West & Sally Reynolds  
Hall, Farley, Oberrecht & Blanton, P.A.  
702 West Idaho Street, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701-1271  
Facsimile: (208) 395-8585

( ) U. S. Mail  
(X) Facsimile Transmission  
( ) Hand Delivery  
( ) Overnight Delivery

Kim Madsen, Court Reporter  
Ada County Courthouse  
200 W. Front Street  
Boise, Idaho 83702

(X) U. S. Mail  
( ) Facsimile Transmission  
( ) Hand Delivery  
( ) Overnight Delivery



THOMAS MAILE, Counsel for Appellants

AM. 8:00 PM

OCT 20 2009

J. DAVID HENNINGSON, CLERK  
By BRADLEY J. THIES  
DEPUTY

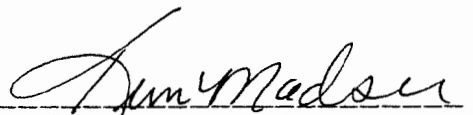
TO: Clerk of the Court  
Idaho Supreme Court  
451 West State Street  
Boise, Idaho 83720

( Case No. 36828  
(  
( DEMOULIN  
(  
( vs.  
(  
( CUNA MUTUAL  
(

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on September 23, 2009, I  
lodged an appeal transcript of 20 pages in  
length for the above-referenced appeal with the District  
Court Clerk of the County of Ada in the 4th Judicial  
District.

This transcript contains hearings held on.  
...July 16, 2009

  
KIM T. MADSEN  
Ada County Courthouse  
200 West Front Street  
Boise, Idaho 83702  
(208) 287-7583

00086

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
deceased, by and through her personal  
representative and JOSEPH DUMOULIN,  
an individual,

Plaintiff-Appellant,

vs.

CUNA Mutual Group, an Iowa  
corporation, authorized by the State of  
Idaho, Department of Insurance, to transact  
business in the State of Idaho,

Defendant-Respondent.

Supreme Court Case No. 36828

CERTIFICATE OF EXHIBITS

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the  
State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the  
course of this action.

I FURTHER CERTIFY, that the following documents will be submitted as EXHIBITS to  
the Record:

1. Affidavit Of Counsel In Support Of Motion For Summary Judgment, filed  
April 20, 2009.
2. Memorandum In Support Of Motion For Summary Judgment, filed April 20, 2009.
3. Affidavit Of Stephen J. Bekanich Re: Motion For Summary Judgment, filed  
May 12, 2009.
4. Affidavit Of Thomas G. Maile In Opposition To Defendant's Motion For Summary  
Judgment, filed May 12, 2009.
5. Affidavit Of Sheri Arnold In Opposition To Defendant's Motion Of Summary Judgment,  
filed May 12, 2009.
6. Affidavit Of Joseph Dumoulin In Opposition To Defendant's Motion Of Summary  
Judgment, filed May 12, 2009.

CERTIFICATE OF EXHIBITS

00087

7. Memorandum Brief In Opposition To Defendant's Motion For Summary Judgment, filed May 12, 2009.
8. Memorandum In Support Of Motion To Strike Affidavits Of Joseph Dumoulin And Sheri Arnold, filed June 1, 2009.
9. Affidavit Of Records Custodian Certifying Records, filed June 1, 2009.
10. Reply Memorandum In Support Of CUNA Mutual's Motion For Summary Judgment, filed June 1, 2009.
11. Affidavit In Support Of Motion To Continue Summary Judgment Hearing, filed June 5, 2009.
12. Memorandum In Opposition To Motion To Continue Summary Judgment Hearing, filed June 17, 2009.
13. Affidavit Of Counsel In Support Of Opposition To Motion To Continue Summary Judgment Hearing, filed June 17, 2009.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 20th day of October, 2009.

J. DAVID NAVARRO  
Clerk of the District Court

By BRADLEY J. THIES  
Deputy Clerk

CERTIFICATE OF EXHIBITS

00088

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
deceased, by and through her personal  
representative and JOSEPH DUMOULIN,  
an individual,

Plaintiff-Appellant,

vs.

CUNA Mutual Group, an Iowa  
corporation, authorized by the State of  
Idaho, Department of Insurance, to transact  
business in the State of Idaho,

Defendant-Respondent.

Supreme Court Case No. 36828

CERTIFICATE OF SERVICE

I, J. DAVID NAVARRO, the undersigned authority, do hereby certify that I have  
personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of  
the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

THOMAS G. MAILE, IV

ATTORNEY FOR APPELLANT

BOISE, IDAHO

J. KEVIN WEST

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

J. DAVID NAVARRO  
Clerk of the District Court

Date of Service: OCT 22 2009

By BRADLEY J. THIES  
Deputy Clerk

CERTIFICATE OF SERVICE

00089

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE ESTATE OF JUDY DUMOULIN,  
deceased, by and through her personal  
representative and JOSEPH DUMOULIN,  
an individual,

Plaintiff-Appellant,

vs.

CUNA Mutual Group, an Iowa  
corporation, authorized by the State of  
Idaho, Department of Insurance, to transact  
business in the State of Idaho,

Defendant-Respondent.

Supreme Court Case No. 36828

CERTIFICATE TO RECORD

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 20th day of August, 2009.

J. DAVID NAVARRO  
Clerk of the District Court

By BRADLEY J. THIES  
Deputy Clerk

SEAL

CERTIFICATE TO RECORD

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